



# City of San Marcos

## Regular Meeting Agenda - Final City Council

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Tuesday, October 20, 2020

6:00 PM

Virtual Meeting

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**Due to COVID-19, and as long as the State Disaster Declaration is in effect, this will be a virtual meeting. To view the meeting please go to [www.sanmarcostx.gov/videos](http://www.sanmarcostx.gov/videos) or watch on Grande channel 16 or Spectrum channel 10.**

I. Call To Order

II. Roll Call

III. 30 Minute Citizen Comment Period

*Persons wishing to participate (speak) during the Citizen Comment portion of the meeting must email [citizencomment@sanmarcostx.gov](mailto:citizencomment@sanmarcostx.gov) prior to 12:00PM the day of the meeting. A call in number to join by phone or link will be provided for participation on a mobile device, laptop or desktop computer.*

### PRESENTATIONS

1. Receive status reports and updates on response to COVID-19 pandemic; hold council discussion, and provide direction to Staff.

### CONSENT AGENDA

*THE FOLLOWING ORDINANCES, RESOLUTIONS AND OTHER ITEMS MAY BE ACTED UPON BY ONE MOTION. NO SEPARATE DISCUSSION OR ACTION ON ANY OF THE ITEMS IS NECESSARY UNLESS DESIRED BY A COUNCIL MEMBER OR A CITIZEN, IN WHICH EVENT THE ITEM SHALL BE CONSIDERED IN ITS NORMAL SEQUENCE AFTER THE ITEMS NOT REQUIRING SEPARATE DISCUSSION HAVE BEEN ACTED UPON BY A SINGLE MOTION.*

2. Consider approval, by motion, of the following meeting Minutes:
  - A. September 15, 2020 - Work Session Meeting Minutes
  - B. September 15, 2020 - Regular Meeting Minutes
  - C. September 23, 2020 - Special Meeting Minutes
  - D. September 29, 2020 - Special Meeting Minutes
3. Consider approval of Ordinance 2020-60, on the second of two readings, amending Section 2.361 of the San Marcos City Code relating to the general powers and duties of the San Marcos Arts Commission and recommendations and decisions on funding made by the San Marcos Arts Commission; including procedural provisions; providing for the repeal of any conflicting provisions; and providing an effective date.
4. Consider approval of Ordinance 2020-78, on the second of two readings, repealing Divisions 23 and 24 of Article 3, Chapter 2 of the San Marcos City Code that established the San Marcos Youth Commission and the San Marcos Commission on Children and

Youth, respectively, in connection with the transitioning of the provision of Youth Services through the Core 4 Partnership with Hays County, Texas State University and the San Marcos Consolidated Independent School District; dissolving said commissions; including procedural provisions; and providing an effective date.

5. Consider approval of Ordinance 2020-79, on the second of two readings, reducing the speed limit from 30 miles per hour to 25 miles per hour along the 500-1200 blocks of Burleson Street between Moore Street and Prospect street; authorizing the installation of signs and traffic control devices reflecting the new speed limit; directing that the traffic register maintained under section 82.067 of the San Marcos City Code be amended to reflect the new speed limit; and including procedural provisions.
6. Consider approval of Resolution 2020-220R, approving an Interlocal Contract with the Edwards Aquifer Authority ("EAA") and Texas State University for funding by the EAA of activities under the Edwards Aquifer Habitat Conservation Plan Program; authorizing the City manager, or his designee, to execute this contract on behalf of the City; and declaring an effective date.
7. Consider approval of Resolution 2020-221R, authorizing a Change in Service to the agreements with the real estate appraisal firms previously selected to be on an on-call list to provide appraisal services for various City projects to increase each firm's contract amount from \$50,000.00 to \$100,000.00; authorizing the City Manager or his designee to execute the necessary documents to implement the Change in Service; and declaring an effective date.
8. Consider approval of Resolution 2020-222R, approving a Real Estate Sales Contract with Randy N. and Patrice A. Greer for the City to purchase lots 2 and 3, block 12 of the original town of San Marcos, located at 128 and 140 South Guadalupe Street, for a price of \$1,600,000, plus any associated closing costs, approving amendments to said contract including an amendment providing for the withholding of funds in an amount up to \$225,000 for expenses associated with enrolling in the Texas Commission on Environmental Quality ("TCEQ") voluntary cleanup program; approving a Voluntary Cleanup Program Agreement with the TCEQ in connection with the purchase of the property; approving the execution of said Real Estate Sales Contract by the City Manager, or his designee, on behalf of the city; authorizing the City Manager, or his designee, to execute the contract amendment regarding the withholding of funds under the TCEQ voluntary cleanup program, any related closing documents and the TCEQ Voluntary cleanup program agreement on behalf of the City; and declaring an effective date.
9. Consider approval of Resolution 2020-223R, approving a Real Estate Sales Contract with Patricia R. Murphy and Mary O. Black for the city to purchase lot 1, block 12 of the original town of San Marcos, located at 152 South Guadalupe street, for a price of \$824,000, plus any associated closing costs; approving the execution of said contract by the City Manager, or his designee, on behalf of the city; authorizing the city manager, or his designee, to execute any related closing documents on behalf of the city; and declaring an effective date.
10. Consider approval of Resolution 2020-224R, approving the Alliance Regional Water

Authority (ARWA) Issuing Contract Revenue Bonds for the City of San Marcos in the aggregate principal amount of \$43,955,000.00 including approval of the Bond Resolution and other related matters in accordance with the Regional Water Supply Contract; authorizing the City Manager or his designee to execute any necessary related documents; and declaring an effective date.

11. Consider approval of Resolution 2020-225R, approving an interlocal agreement with the Canyon Regional Water Authority for the treatment and transmission of water from the Canyon Regional Water Authority Hays-Caldwell Water Treatment Plant; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.
12. Consider approval of Resolution 2020-226R, approving a Change in Service to the agreement with GDS Associates, Inc. relating to a utility rate study to increase the contract amount by \$62,000.00 for a total contract amount of \$142,000.00; authorizing the City Manager or his designee to execute the documents necessary to implement the Change in Service; and declaring an effective date.
13. Consider approval of Resolution 2020-227R, approving an Airport Facility Lease Agreement for Commercial Use for Airport property located at 2049 Airport Drive with Gryphon Aviation, Inc for an initial eighteen-month term; authorizing the City Manager or his designee to execute the lease on behalf of the City; and declaring an effective date.
14. Consider approval of Resolution 2020-228R, approving a month-to-month Airport Facility Lease Agreement for Commercial Use for Airport property located at 4400 Highway 21 with Air Carriage Over Texas, LLC; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.
15. Consider approval of Resolution 2020-229R, approving the compliance policy under Title VI of the Civil Rights Act of 1964 in connection with the City's requirements as Direct Recipient of Federal Transit Administration Funding, and declaring an effective date.
16. Consider approval of Resolution 2020-230R, approving a Chapter 380 Economic Development Incentive Agreement with DBI San Marcos Property, L.P., providing incentives in the form of refunds of a percentage of real property taxes over three years for the development of approximately 174,515 square feet of space for lease to commercial and industrial users at 1551 Clovis Barker; authorizing the City Manager, or his designee, to execute said agreement; and declaring an effective date.

## PUBLIC HEARINGS

*Persons wishing to participate (speak) during the Public Hearing portion of the meeting must email [citizencomment@sanmarcostx.gov](mailto:citizencomment@sanmarcostx.gov) prior to 12:00PM the day of the meeting. A call in number to join by phone or link will be provided for participation on a mobile device, laptop or desktop computer.*

17. Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-77, amending the Official Zoning Map of the City in Case No. ZC-20-12 by rezoning approximately 14.71 acres out of the J.W. Berry Survey, located near the 1500 block of N LBJ Drive (Steen Road) from "FD" Future Development District to "SF-6" Single Family District; including procedural provisions; and providing an effective date; and

consider approval of Ordinance 2020-77, on the first of two readings.

## **NON-CONSENT AGENDA**

18. Consider approval of Resolution 2020-231R, approving an agreement for the provision of services in connection with the proposed owner requested annexation of approximately 33 acres of land, generally located in the 2400 Block of State Hwy 123 (Case No. AN-20-12: Picoma); authorizing the City Manager, or his designee, to execute said agreement on behalf of the City; setting a date for a Public Hearing concerning the proposed annexation of said tract of land; and declaring an effective date.
19. Consider approval, by motion, to move the December 1, 2020 Regular City Council meeting, due to the Election Runoff, to Wednesday, December 2, 2020, and provide direction to Staff.
20. Consider applications from interested citizens for service on an ad hoc committee to study the use of force policies of the San Marcos Police Department and make recommendations to the Chief of Police and City Council, hold discussion and make appointments to the committee, and provide direction to staff.
21. Consider applications from interested citizens for service on a Comprehensive Plan Rewrite Steering Committee charged with assisting in the City's Comprehensive Plan rewrite; hold discussion and make appointments to the committee, and provide direction to Staff.
22. Receive a Staff update on CARES Funding, discuss program strategy and options for Coronavirus Relief Fund (CRF) and Community Development Block Grant - Coronavirus (CDBG-CV) Round Three funding, and provide direction to staff.
23. Receive a Staff presentation and hold discussion regarding the utility disconnections for non-payment, and provide direction to Staff.
24. Hold discussion on San Marcos Convention and Visitor Bureau Board Recommendation Resolution proposing to the City Council that the Second Saturday of May and October be recognized as World Migratory Bird Days; and provide direction to staff.
25. Hold discussion on Parks and Recreation Board Recommendation Resolution 2020-02RR, supporting the implementation of healthy streets, also known as slow streets, to promote active recreation and transportation in the public right of way on low traffic neighborhood streets and to promote a multimodal network connecting greenspaces and parks, and provide direction to staff.
26. Hold discussion on Historic Preservation Commission Recommendation Resolution 2020-02RR, proposing City Council support for the repatriation efforts of the Miakan-Garza Band of the Coahuiltecan people, and provide direction to staff.

## **EXECUTIVE SESSION**

*NOTE: The City Council may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of*

*the basis for the Executive Session discussion. The City Council may also publicly discuss any item listed on the agenda for Executive Session.*

27. Executive Session in accordance with:
- A. Section §551.074 of the Texas Government Code: Personnel Matters - to discuss the duties and responsibilities of the City Manager, pertaining to the Police Chief Selection Process
  - B. Section §551.071 of the Texas Government Code: Consultation with Attorney - to receive advice of legal counsel regarding acquisition of wastewater easement for proposed development in the Southeast area of the Extraterritorial Jurisdiction
  - C. Section §551.072 of the Texas Government Code: Real Property - to receive a staff briefing and deliberations regarding the acquisition of wastewater easement for proposed development in the Southeast area of the Extraterritorial Jurisdiction
  - D. Section §551.072 of the Texas Government Code: Real Property - to receive a staff briefing and deliberations regarding acquisition of property in Downtown San Marcos for public use.

#### **ACTION/DIRECTION FROM EXECUTIVE SESSION**

28. Consider action, by motion, or provide direction to Staff regarding the following Executive Session items held during the Work Session and/or Regular Meeting:
- A. Section §551.074 of the Texas Government Code: Personnel Matters - to discuss the duties and responsibilities of the City Manager, pertaining to the Police Chief Selection Process
  - B. Section §551.071 of the Texas Government Code: Consultation with Attorney - to receive advice of legal counsel regarding acquisition of wastewater easement for proposed development in the Southeast area of the Extraterritorial Jurisdiction
  - C. Section §551.072 of the Texas Government Code: Real Property - to receive a staff briefing and deliberations regarding the acquisition of wastewater easement for proposed development in the Southeast area of the Extraterritorial Jurisdiction
  - D. Section §551.072 of the Texas Government Code: Real Property - to receive a staff briefing and deliberations regarding acquisition of property in Downtown San Marcos for public use.

IV. Adjournment.

**POSTED ON WEDNESDAY, OCTOBER 14, 2020 @ 4:00PM**

**TAMMY K. COOK, INTERIM CITY CLERK**

### Notice of Assistance at the Public Meetings

The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 855-461-6674 or sent by e-mail to [ADArequest@sanmarcostx.gov](mailto:ADArequest@sanmarcostx.gov)



## Legislation Text

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**File #:** ID#20-710, **Version:** 1

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**AGENDA CAPTION:**

Receive status reports and updates on response to COVID-19 pandemic; hold council discussion, and provide direction to Staff.

**Meeting date:** October 7, 2020

**Department:** City Manager's Office

**Amount & Source of Funding**

**Funds Required:** N/A

**Account Number:** N/A

**Funds Available:** N/A

**Account Name:** N/A

**Fiscal Note:**

**Prior Council Action:** [Click or tap here to enter text.](#)

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Click or tap here to enter text.



# **City of San Marcos**

## **City Council Meeting**

October 20, 2020



# Status Report

## Item 1

Receive status reports and updates on response to COVID-19 pandemic; hold Council discussion, and provide direction to Staff.



# Known Cases – as of October 16

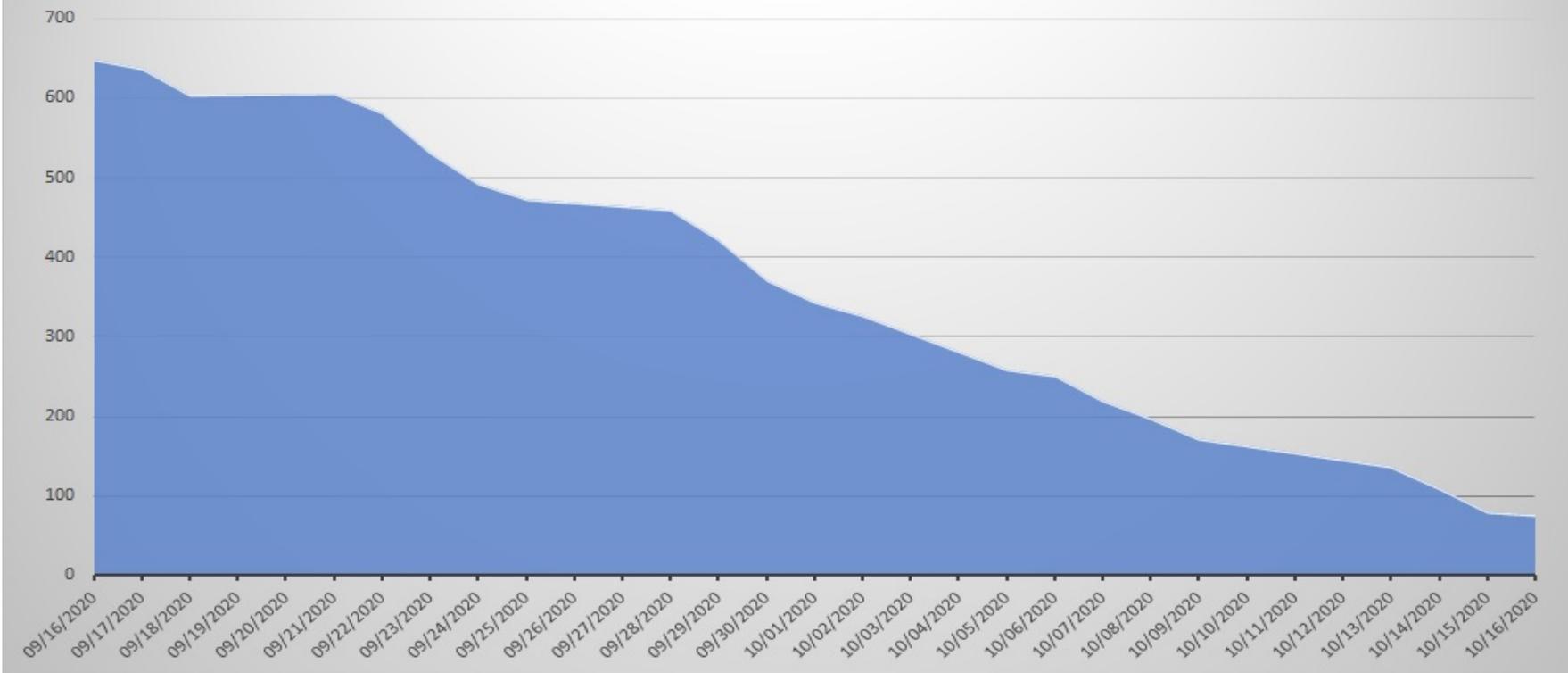
- **More than 823k total cases (82,347 active) cases in Texas with 17,014 fatalities**
  - *\*source: Texas Department of State Health Services*
- **6,155 total cases in Hays County (727 active and 5,367 recovered) with 61 fatalities**
  - 355 cases have required hospitalization, 6 current
- **3,088 total cases in San Marcos (76 active and 2,989 recovered) with 32 fatalities**

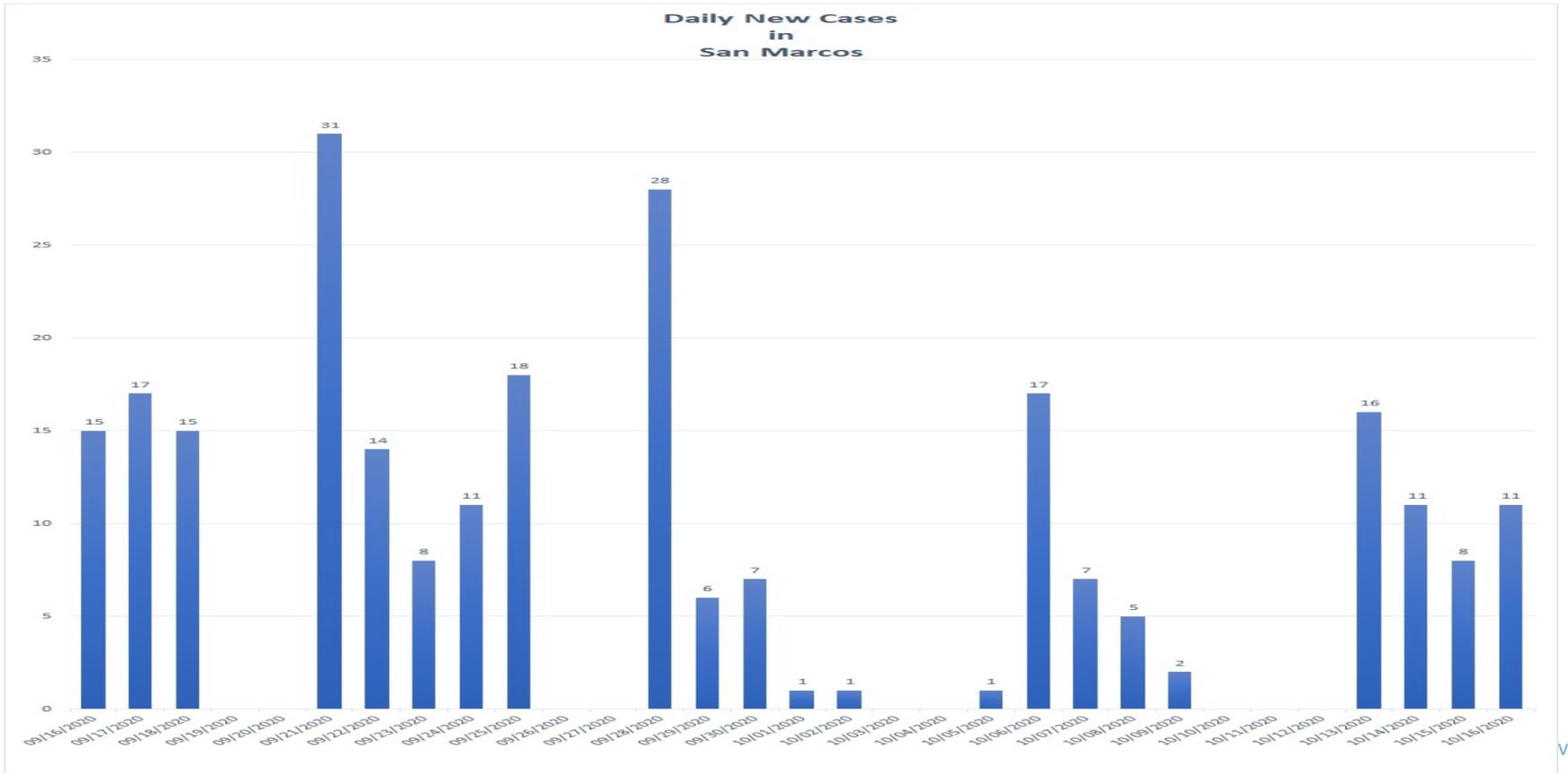
*\*source: Hays County Health Department*

- **742 total cases at TX State (60 active)**
  - 698 students, 44 faculty/staff
  - *\*source: Texas State University Student Health Services*



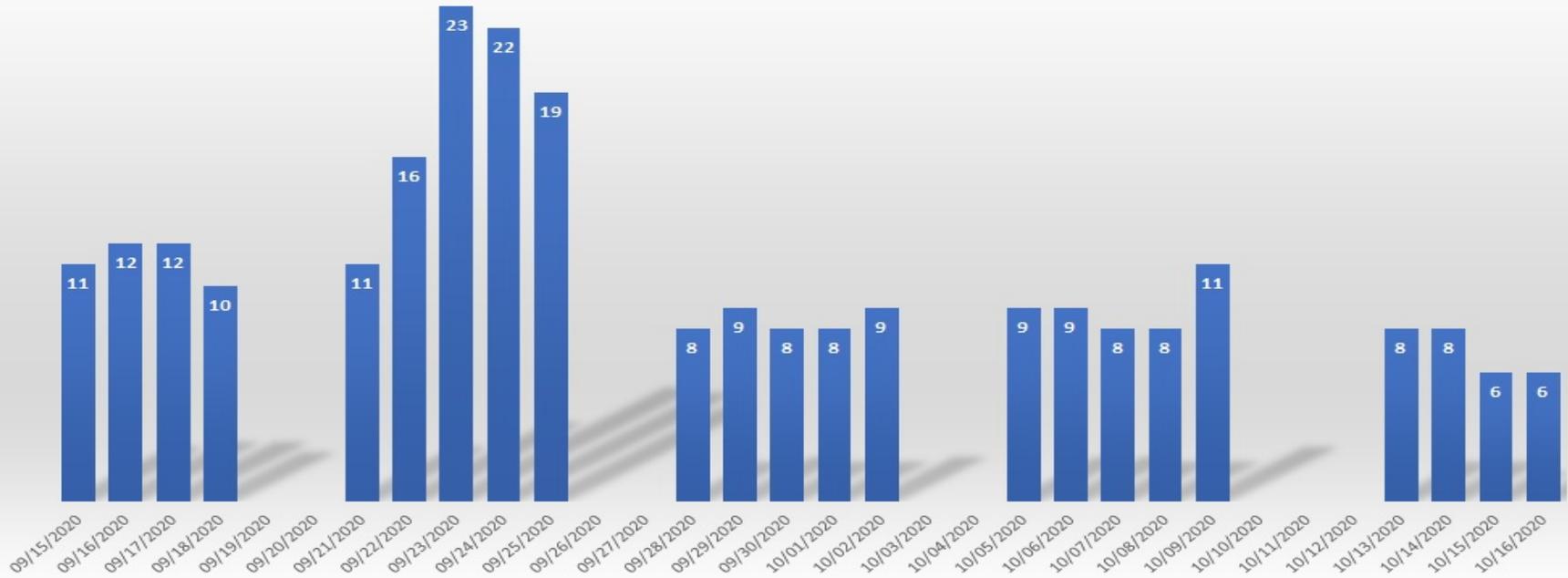
## Active Cases San Marcos







## Currently Hospitalized County Residents





# Testing Overview

- **37,666 tests administered county wide**
  - 31,511 negative (83.6%)
  - 6,155 confirmed (16.3%)
  - 749 probable
- **Testing by Curative (Ramon Lucio Park)**
  - Open daily from 9:00 a.m. to 5:00 p.m.
  - Anticipated service through December
- **Future testing site – Medical Parkway**
  - 2<sup>nd</sup> van provided by Curative
  - Possible brick and mortar site for future testing and vaccinations



# Updates to Governor Abbott's Actions

- **October 7: Executive Order To Open Bars In Qualifying Counties**
  - Bars may offer on-premise services at up to 50 percent of the total listed occupancy
  - Patrons at bars or similar establishments may eat and drink only while seated
  - Must not be in an area with high hospitalizations, have approval from the county judge
- **October 7: Encourages Health Care Providers To Enroll In DSHS Immunization Program In Preparation For COVID-19 Vaccine**
  - Providers must agree to administer vaccine regardless of a recipient's ability to pay, provide a vaccination record to each recipient, follow federal guidelines
  - Any vaccine must be authorized by Food and Drug Administration before distribution
- **October 14: TEA, TDEM Announce COVID-19 Rapid Testing Pilot Program For Texas School Systems**
  - Eight participating school systems provided with COVID-19 rapid antigen tests that will be administered to students, teachers, and staff who choose to participate
  - Interested schools can apply through the Texas Education Agency through October 28



# Updates to eviction processes

- **CDC Order – effective 9/4/20**
  - Valid through end of 2020 unless extended
  - Applies to evictions for non-payment of rent at residential properties
  - Must seek all available government assistance
  - Income capped at \$99,000/\$198,000 (single/joint)
  - Must attempt to make partial payments
  - Must submit declaration form to landlord



# Helpful community links

- <http://www.sanmarcostx.gov/covid19info>
- <http://haysinformed.com/health-update/>
- <https://hayscountytexas.com/covid-19-information-for-hays-county-residents/>
- <https://www.txstate.edu/coronavirus>
- <https://www.smcisd.net/>
- <https://www.dshs.texas.gov/coronavirus/>
- <https://www.trla.org/covid19-main>



Legislation Text

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**File #:** ID#20-709, **Version:** 1

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**AGENDA CAPTION:**

Consider approval, by motion, of the following meeting Minutes:

- A. September 15, 2020 - Work Session Meeting Minutes
- B. September 15, 2020 - Regular Meeting Minutes
- C. September 23, 2020 - Special Meeting Minutes
- D. September 29, 2020 - Special Meeting Minutes

**Meeting date:** 10/7/2020

**Department:** City Clerk

**Amount & Source of Funding**

**Funds Required:** N/A

**Account Number:** N/A

**Funds Available:** N/A

**Account Name:** N/A

**Fiscal Note:**

**Prior Council Action:** Approval of Previous Meeting Minutes

**City Council Goal:** [Please select goal from dropdown menu below]

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from below]

- Economic Development Choose an item.
- Environment & Resource Protection Choose an item.
- Land Use Choose an item.
- Neighborhoods & Housing Choose an item.
- Parks, Public Spaces & Facilities Choose an item.
- Transportation Choose an item.
- Not Applicable

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**File #:** ID#20-709, **Version:** 1

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**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

The following minutes are attached for review:

- A. September 15, 2020 - Work Session Meeting Minutes
- B. September 15, 2020 - Regular Meeting Minutes
- C. September 23, 2020 - Special Meeting Minutes
- D. September 29, 2020 - Special Meeting Minutes

**Council Committee, Board/Commission Action:** Click or tap here to enter text.

**Alternatives:**

**Recommendation:** Approve Minutes as attached



# City of San Marcos

## Work Session Meeting Minutes City Council

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Tuesday, September 15, 2020

3:00 PM

Virtual Meeting

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**This meeting was held using conferencing software due to Covide-19 rules.**

### I. Call To Order

**With a quorum present, the work session of the San Marcos City Council was called to order by Mayor Hughson at 3:04 p.m. Tuesday, September 15, 2020. The meeting was held virtually.**

### II. Roll Call

**Present:** 7 - Council Member Melissa Derrick, Mayor Jane Hughson, Mayor Pro Tem Ed Mihalkanin, Council Member Joca Marquez, Deputy Mayor Pro Tem Mark Rockeymoore, Council Member Maxfield Baker and Council Member Saul Gonzales

### PRESENTATIONS

1. Receive a presentation and update by Chamber President, Jason Mock regarding the San Marcos Area Chamber of Commerce.

**Mayor Hughson stated per the request of the San Marcos Area Chamber of Commerce this item will be postponed for a couple of months.**

2. Receive a presentation from the Ethics Review Commission and hold discussion regarding proposed amendments to the Code of Ethics to require registration of lobbyists and requiring lobbyists to provide periodic reports of lobbying activities; and provide direction to staff.

**Michael Cosentino, City Attorney provided a brief introduction and stated that the Ethics Review Commission passed a resolution on this topic May 27 2020, however, Council has discussed this previously in March of 2018 along with Campaign Finance which has been adopted. In January 2019 Council discussed during a work session. There were concerns and Ethics Review Committee (ERC) created a committee on the lobbying issues which completed their work in Sep 2019. The ordinance draft presented requires registrations, restrictions and reporting for lobbyist.**

**Jonathan Lollar, Vice-Chair of the Ethics Review Commission (ERC) and Tammy Walden, ERC Commissioner provided the presentation regarding**

proposed amendments to the Code of Ethics to require registration of lobbyists and requiring lobbyists to provide periodic reports of lobbying activities.

Mr. Lollar stated the reasoning for lobbying is to ensure a government is accountable to its citizens and whose actions demonstrate a willingness to govern on behalf of them, not special interest groups or for personal agendas (Open San Marcos). Mr. Lollar mentioned the following cities: Austin, Denton, Kyle, San Antonio, New Braunfels, and Buda all have anti-lobbying ordinances in place. This is to enhance the trust of constituents. The Department of Purchasing and Contracting already has an Anti-Lobbying clause, and the ERC thinks an expanded ordinance should to be in place for all city employees/officials.

The Department of Purchasing and Contracting adheres to a set of ethical standards which includes an anti-lobbying clause, outlined below:

#### **V. Anti-Lobbying**

Vendors are prohibited from directly or indirectly communicating with City Council members regarding their qualifications or any other matter related to the eventual award of Contract. Vendors are prohibited from contacting City staff or committee members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff or committee member. Any violation of this provision will result in immediate disqualification of the Vendor from the selection process.

Mr. Lollar noted a few ethics complaints in the recent past including the recent firing and charging of a city employee.

#### **Draft Purpose of the Ordinance:**

**Purpose of this ordinance:** The lobbying provisions of this ordinance are designed to *improve transparency* regarding city business and services to the public. To *maintain public confidence and public trust* in our city officials and employees when public resources are used and municipal decisions are made, this lobbying ordinance requires certain individuals to *register and report exchanges* with city officials and city employees.

Mr. Lollar presented the definition of *Lobby or lobbying*, which means any oral or written communication (including an electronic communication) to a City official or city employee, made directly or indirectly by any person for compensation or economic benefit in an effort to influence or persuade an official to favor or oppose, recommend or not recommend, vote for or against,

or take or refrain from taking action on any municipal question. And very important to the definition are the exceptions to lobbying which include municipal questions, statements made at public meetings, matters of public record.

Mayor Pro Tem Mihalkanin asked for clarification regarding a person may not need compensation to register as a lobbyist. Mr. Lollar stated that it may not be necessary to prove the intention to benefit in order to be a contract application or lobbyist administration. Mr. Lollar noted that the types of questions posed could determine if the person is acting as a lobbyist.

Mayor Pro Tem Mihalkanin asked if a citizen contacts a council member and states they are against a rezoning request near their house, does that person have to register before reaching out to council members. Mr. Lollar stated that anybody could do it at a public meeting. Mr. Lollar stated there could not be grievances or complaints on a project as that could be a First Amendment infraction. Mr. Cosentino noted that the Action Triggers an Exception List.

Council Member Derrick stated sometimes it is a group of people, perhaps who have signed a petition, who want the council to vote their way and we need to consider groups.

Mayor Hughson asked about the cases where the possible rezoning could result in a change of property value for those wishing to express an opinion which mean financial implications. Mr. Cosentino stated the exceptions of lobbying regarding rezoning.

Council consensus is to add provisions to address an exception for an individual to speak against the rezoning change or alcohol conditional use permit near their property regardless of if they live there.

Mr. Cosentino pointed out that in rezoning cases, those who live within 400' of the affected property receive a notice. Council consensus is to have city staff provide the reporting on behalf of the council subcommittee.

Council Member Derrick asked about the Council Affordable Housing committee, noting that often those who wish to build apartment complexes will address that committee. The question is the same regarding other committees who may be lobbied. Who files the report? The staff who support that committee or each individual council member? Mr. Cosentino verified that this

is a reportable lobbying activity. The consensus is to ensure the staff member files the report. If a council member discusses the issue outside of a committee meeting, that would be the individual council member's responsibility to report.

Council Member Baker inquired if a lobbyist must disclose the organizations of which they are a member. Mr. Lollar responded that a lobbyist would have to disclose the organization or whose behalf they are lobbying. Mr. Cosentino noted that this is covered in the Registration Required section (1) d. which states "Any person, other than the client, who is known by the lobbyist to contribute financially to the compensation of the lobbyist, or which, in whole or in major part, plans, supervises, or controls the lobbyist's lobbying activities on behalf of the client."

Deputy Mayor Pro Tem Rockey Moore noted that during his tenure on the Ethics Review Commission, he worked on this proposal. He inquired about how this ordinance compares to ordinances in other cities nearby. Mr. Lollar noted the committee looked at ordinances in Austin and San Antonio to start. They also looked at New Braunfels and Kyle. Those were not as specific. They were concerned about more and more student housing and decided to use text from the larger cities since San Marcos is growing. He noted that we need this ordinance.

Mayor Hughson asked the following questions, what is the point of the ordinance? Is it more for employees or elected officials? What is the problem they are trying to solve? Mr. Lollar stated people are often worried about how the developments and new businesses are being approved. We are trying to prioritize transparency to ensure we have the trust of constituents. Mr. Lollar stated when accusations of mistrust are made, that reporting will be available and the city will be in a state to show who we are dealing with. Ms. Walden stated when complaints come in, the city is protected and the lobbyists are responsible for the paperwork. He noted that there have been four ethics complaints in 2020 so far.

Mayor Hughson read the definition of Municipal Question which states: "Municipal question means a public policy issue of a discretionary nature pending or impending before City Council or any board or commission, including, but not limited to, proposed action, or proposals for action, in the form of ordinances, resolutions, motions, recommendations, reports, regulations, policies, nominations, appointments, sanctions, and bids,

including the adoption of specifications, awards, grants, or contracts.” She inquired at what point does a concept or idea rise to this? After application is filed, once it’s on an agenda? It appears to hold city council members responsible for what may be on non-council agendas. Mr. Cosentino stated there is a pre-development meeting with staff, that would fit under “impending” and anything further could be “pending” and noted that staff may make recommendations as to which zoning might be approved prior to an application. All of these would be covered.

Mayor Hughson stated under Action Triggers “(6) Requests for special considerations for city services or a change in the Master Plan, or Comprehensive Plan,” to strikethrough the word “the” and add “a”. The new section will read as follows: (6) Requests for special considerations for city services or a change in a Master Plan, or Comprehensive Plan,

Mayor Hughson mentioned that the following sentence is incomplete under numeral II, Action Triggers and asked staff to correct it. “Instances where the above contracts, applications, and activities are part of a quid pro quo agreement or for benefit (as defined in Section 2.422).” We need this completed. Mayor Hughson noted that she served on the ERC in the past and a year was spent on “gifts” and who could receive what type of gift, be it a bouquet of flowers or other item. She is concerned that there are possible “gotchas” in the ordinance, as well-written as it may be, and that it could be used in a way that was not intended. She thanked the ERC for their time and work on this ordinance. Mayor Hughson inquired when this will come back to Council. Mr. Cosentino asked Council if they want to see this come back and provided a summary of what council would like to see included within the Ordinance.

Mayor Hughson asked Council if Greater San Marcos Partnership (GSMP) is to be considered a lobbying effort. Council Member Marquez stated yes to consider GSMP as a lobbyist.

Council Member Derrick doesn’t feel GSMP should be considered as a lobbyist due to employment with the city to bring in prospect information and they provide recommendations to the city. She is concerned about the Chamber of Commerce, as they are not employed by the city and they do often lobby for or against the efforts of the city.

Council Member Baker stated GSMP is shifting their funding is now more private sector than public and he feels that they do count as a lobbying group.

**Deputy Mayor Pro Tem Rockeymoore, Council Member Gonzales, Mayor Hughson and Mayor Pro Tem Mihalkanin stated GSMP should not to be included as a lobbyist.**

**Council Member Baker asked if the GSMP has to follow the lobbying reporting as an employee when GSMP is being lobbied since they are employed by us. This would be when they are lobbied by others. Mayor Hughson stated they are not employees but do contract with the city. Mr. Cosentino stated that we have a definition for “city official” in Section 4.222. GSMP is the main liaison representing the city but will bring back the interpretation of the definition and with council consensus to exclude GSMP from this ordinance and such language will be added.**

**Mayor Pro Tem Mihalkanin inquired about a whole range of organizations in our community as some are advocacy groups. This includes social service and non-profit organizations including the Chamber of Commerce. Mayor noted that most of these are working in the community’s interest and there is no personal benefit to the members. This appears to be covered in the ordinance. Mr. Cosentino noted that if the lobbying is to benefit the organization, they might be considered a lobbyist. Mr. Cosentino and the ERC will review and provide clarification when this item is returned to a council agenda.**

## **EXECUTIVE SESSION**

- 3. Executive Session in accordance with §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding pending litigation, to wit: The Mayan at San Marcos River, LLC and City of Martindale v. City of San Marcos, Docket No. 04-19-00018-CV in the 4th Court of Appeals of Texas.**

**A motion was made by Council Member Derrick, seconded by Deputy Mayor Pro Tem Rockeymoore, to enter into Executive Session at 4:52 p.m. The motion carried by the following vote:**

**For: 7 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Council Member Marquez, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales**

**Against: 0**

**III. Adjournment.**

**Executive Session was concluded at 5:22 p.m.**

**Mayor Hughson adjourned the work session of the City Council on September 15, 2020 at 5:22 p.m.**

**Tammy K. Cook, Interim City Clerk**

**Jane Hughson, Mayor**



# City of San Marcos

## Regular Meeting Minutes

### City Council

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Tuesday, September 15, 2020

6:00 PM

Virtual Meeting

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**This meeting was held using conferencing software due to the COVID-19 rules.**

#### I. Call To Order

**With a quorum present, the regular meeting of the San Marcos City Council was called to order by Mayor Hughson at 6:00 p.m. Tuesday, September 15, 2020, This meeting was held virtually.**

#### II. Roll Call

**Present:** 7 - Council Member Melissa Derrick, Mayor Jane Hughson, Mayor Pro Tem Ed Mihalkanin, Council Member Joca Marquez, Deputy Mayor Pro Tem Mark Rockeymoore, Council Member Maxfield Baker and Council Member Saul Gonzales

#### III. 30 Minute Citizen Comment Period

**Ezekiel Enriquez expressed concerns with the police department on how some officers handle situations. Mr. Enriquez also stated concerns with tax payer's money and how it is being wasted on project delays.**

**John Garcia would like the city to keep it clean and safe at each intersection due to homeless individuals leaving trash behind.**

**Jordan Buckley spoke on cite and release and stated based on the report from Chief's Advisory Panel it that citations were issued every time it was allowed. He notes that police are still issuing warnings. Mr. Buckley stated that he is working closing with elected officials from other cities and organizations that are working on a cite and release ordinance and using San Marcos ordinance as a model. Mr. Buckley stated he feels that the ordinance is in violation by not having people participate that have been directly impacted by criminal justice to be at the meetings and would like for staff to involve other organizations to be a voice and have a seat at the table. Mr. Buckley asked Council Member Mihalkanin as a member of the Criminal Justice Reform Committee to sign an agreement like Hays County Commissioners did on Vera Institute of Justice to have access and share transparency on arrests and jail data.**

**Lisa Marie Coppoletta spoke on a press release from city staff regarding 30-40% tree canopy coverage goal and will be planting 500 trees. Ms. Coppoletta asked what has the city done for live oak protection under land development code for private home owners. Ms. Coppoletta expressed concern on the upcoming project at Blanco Gardens.**

**Randy Dethrow congratulated the city on the cite and release ordinance. He stated he has been a victim of the criminal system and unfairness. Mr. Dethrow is glad that the San Marcos Police Department are not like other departments in other cities and are good officers.**

**Alfonso Sifuentes, Director of Public Sector Services & Community Relations with Central Texas Refuse, expressed concerns on item #21 for the contract renewal with Texas Disposal System. He would like the contract to go out for bid.**

## **PRESENTATIONS**

1. Receive status reports and updates on response to COVID-19 pandemic, including but not limited to plans for re-opening parks; hold council discussion, and provide direction to Staff.

**Chase Stapp, Director of Public Safety provided a presentation regarding the COVID-19 pandemic.**

**Known Cases – as of September 11**

**• Nearly 6.5 million U.S. cases with more than 193,000 fatalities. (>240k new cases in past 7 days)**

**\*source: Center for Disease Control and Prevention**

**• Nearly 660k (67,412 active) cases in 251 Texas counties with 14,190 fatalities**

**\*source: Texas Department of State Health Services**

**• 5,598 in Hays County with 51 fatalities (1,914 active and 2,967 recovered)**

**– 424 fewer active cases than last update and 5 fatalities**

**– 716 active and 2,043 recovered in San Marcos (28 fatalities)**

**– dropped to 667 active cases in San Marcos as of today**

**– 158 cases have required hospitalization, as of today it is 11 currently in the hospital**

**Mr. Stapp stated that one employee is recovering at home.**

**\*source: Hays County Health Department**

**Updates to Governor Abbott's Actions**

**• August 31: Extension of emergency Supplemental Nutrition Assistance Program (SNAP) benefits through September**

- Texas Health and Human Services Commission (HHSC) to provide approximately \$188 million in emergency SNAP benefits
- More than 972,000 SNAP households will see the additional amount on their Lone Star Card by September 15
- September 7: Renews COVID-19 Disaster Declaration
- Renews the disaster declaration for all Texas counties that was first issued on March 13

#### Testing Overview

- 31,283 tests administered county wide
  - 25,662 negative (81.7%)
  - 5,598 confirmed (18.2%)
  - 23 pending
  - County free testing – Live Oak Clinic on Broadway and Live Oak Primary Care clinic in Wimberley
- County contacted by the state opportunity through TDEM week long testing and more details will be provided.

#### Utility Bill Late Fees

- Per Council direction in March, all utility bill late fees have been suspended through the end of the calendar year.
- Removing late fees from customer accounts has equated to \$375,000 in late fees being waived.

#### Parks and Facilities Re-Opening

- City lobbies and services
  - Modified opening 9/16 at 8:00 AM
  - Encourage the public to continue to handle City business remotely
  - Continued use of Teams and Zoom for internal & external meetings
  - Use of appointments as much as possible
  - Certain services on limited days and times
  - Parks and Athletic Facilities
  - Modified opening 9/16: 8:00 AM to 8:00 PM Daily
  - Active recreation allowed in river-front parks
  - Designated entry and exit points for the river
  - Fencing re-configured to discourage passive recreation and allow use of Tennis Courts
  - Neighborhood parks and playscapes open
  - Athletic facilities, basketball courts and parks open for play
- Reminder: Portions of Rio Vista Park, Children’s Park and City Park are active construction zones for the Shared Use Path Project

Deputy Mayor Pro Tem Rockey Moore expressed concerns about the active

case count the movement of case count numbers to recovered. He inquired about the different methods utilized by Travis County and San Marcos regarding how cases are moved to recovered. Mr. Stapp stated that Travis County automatically moves a person to recovered status once 21 days passes from the positive test. In San Marcos, the Health Department will check in by having an investigation over the phone and a person must be symptom free to be considered recovered. Deputy Mayor Pro Tem Rockeymoore asked if the County has been under staffed? Mr. Stapp stated that at first it was a small number of staff but there are additional positions that have assisted. Deputy Mayor Pro Tem Rockeymoore asked in regards to the current staffing and moving the active cases to recovered it lists the active cases much higher in San Marcos than other cities with more population. Mr. Stapp mentioned other cities are using other methods to move patients to recovered and Hays County does an investigation and does have a more efficient process.

Council Member Baker asked about percentages of active cases and stated it has been similar since the beginning and asked if we are better off now than before? Mr. Stapp stated mid-July did have a spike in cases but the best way to ensure safety is to remain diligent in protection and social distancing. Council Member Baker asked if Eric Schneider, Epidemiologist has advised if it is safe to open at this point. Mr. Stapp stated that the decision was made by the City team. Council Member Baker asked what specific number do we need to have a re-closure of the city. Mr. Stapp stated that they are not looking at a specific number but will be looking at the trajectory trend.

Council Member Derrick asked about exit and entry points at the river, how many entry and exits will there be and where would they be located. Jamie Lee Case, Assistant Director of Parks and Recreation, stated residents can enter city park for swimming and kayaking (recreational activities) and exit Rio Vista and there will be signage. Mrs. Case stated staff will block the actual park and remove picnic tables and BBQ areas to limit the ability for people to gather. Mrs. Case stated the fencing has been modified away from the river and it blocking more of the park areas. Council Member Derrick stated citizens were confused due to tube outfitters being closed due to the Governors order but they are allowed to bring in their own tube. Council Member Derrick asked about parking. Mrs. Case stated the City parking lot will be open for parking and Rio Vista parking lot will be closed due to construction. Residents can park at Cheatham and CM Allen and the parking lot at Rio Vista will have a trail to walk down to the new shared use path. Council Member Derrick would like to make sure it is conveyed that citizens wear masks when loading

or unloading on city property when social distancing isn't possible.

Council Member Baker asked about social distancing at the parks and if the Park Rangers and officers will be enforcing. Mrs. Case stated that they will be reminding citizens about social distancing. Council Member Baker asked if they need to report and to who do they call. Mr. Stapp stated to call police department non-emergency line at 512-753-2108.

2. Receive a staff presentation and hold discussion regarding the San Marcos Police Department use of cite and release.

**Bert Lumbreras, City Manager provided a brief introduction regarding the Police Department's use of cite and release. He stated with many aspects of City operations, COVID-19 has also had an effect on the number of calls for service, traffic stops, and index offenses from previous years. He also recognized Chief's Klett leadership, the San Marcos Police Department administration and all of the officers who have helped implement this ordinance which is the first of its kind in the state. Mr. Lumbreras stated throughout the tragedies and events of this year, the staff have performed with dedication to keep our community safe.**

**Chief Klett provided the cite and release ordinance timeline:**

- **Approved on April 7, 2020**
- **Effective on May 31, 2020**
- **Chiefs Advisory Panel on August 19, 2020**
- **Progress update to City Council in three months**

**Chief Klett provided year to date comparisons from time frame January 1 to August 10**

- **2018 – 48,447 Calls for Service / – 10,616 Traffic Stops**
- **2019 – 48,670 Calls for Service / – 10,113 Traffic Stops**
- **2020 – 40,566 Calls for Service / – 4,849 Traffic Stops**

**23% Drop in Index Offenses from 2019. Chief Klett stated that the FBI considers Index Offenses as major offenses for Murder, Rape, Robbery, Assault, Burglary, Larceny (Theft), Motor Vehicle Theft, Arson. Chief Klett stated that robbery and burglary went up in 2020.**

**Street Diversions**

- **2020 Q1 (January 1 – March 31), – 153**
- **2020 Q2 (April 1 – June 30), – 13**
- **2020 Q3 Partial (July 1 – September 9), – 17**

**Chief Klett provided the Cite and Release History are as follows:**

- 2017 – 11
- 2018 – 22
- 2019 – 30
- 2020 – 57 (as of September 15)

**Chief Klett stated the cite and release ordinance requirements are:**

- Theft of Service less than \$375
- Theft of Property less than \$375
- Criminal Mischief less than \$375
- Graffiti less than \$375
- Possession of Marijuana less than 4 ounces
- All Class C Misdemeanors (Excl PI, Assault or Family Violence)
- Driving While License Invalid

**Cite and Release Q2 Report (May 31 through June 30)**

- Total Applicable Offenses Cited– 12
- Criminal Mischief – 4
- Driving While License Invalid – 3
- Theft – 2
- Possession of Marijuana – 1
- Fighting – 1
- DUI – 1

**Chief Klett stated that the Cite and Release Reporting is now online and includes address lookup on the Police Department's webpage.**

**Council Member Baker asked if robbery and burglary has increased and asked if staff can define how robbery/burglary and arson are different. Council Member Baker asked how violence and trespassing will be covered under cite and release. Chief Klett stated theft is when someone takes property without consent and burglary is when someone breaks in or enters a house or car that don't have a right to, robbery is theft with a threat of force with bodily injury. Chief Klett stated that the numbers were added reference to show 2020 is a different and seeing a drop in the offenses. Council Member Baker stated that there was so much concern about an increase in theft but theft has gone down and robbery and burglary are not cite and release eligible. Chief Klett stated the three highest cite and release usage is being used for theft, possession of marijuana and driving without a license invalid.**

**Deputy Mayor Pro Tem Rockeymoore asked if the cite and release has been helpful. Chief Klett stated many steps were taken to protect police officers during Covid and the public to decrease the amount of arrests but regarding being helpful, doesn't have an opinion on one way or the other. Deputy Mayor Pro Tem Rockeymoore asked about the street diversions and asked if cite and release might be a part of why the diversions are not happening as much. Chief Klett stated with the drastic numbers of reduction in public contact, some officers may be more lenient on street diversions and other officers are choosing to do it.**

## **CONSENT AGENDA**

**A motion was made by Council Member Baker, seconded by Deputy Mayor Pro Tem Rockeymoore, to approve the consent agenda with the exception of item # 20 and 21 which were pulled and considered separately.**

**Dr. Mihalkanin abstained from a vote on item #23 as he receives 100% of his income from Texas State University.**

### **The motion carried by the following vote:**

**For:** 6 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales

**Against:** 0

**Absent:** 1 - Council Member Marquez

3. Consider approval, by motion, of the following meeting Minutes:
  - A. September 1, 2020 - Work Session Meeting Minutes
  - B. September 1, 2020 - Regular Meeting Minutes
4. Consider approval of Ordinance 2020-61, on the second of two readings, under Case No. AN-20-08 (La Cima Phase 2), annexing into the City approximately 89.694 acres, more or less, out of the John Williams Survey, Abstract 490, and the William Smithson Survey, Abstract 419, Hays County, generally located West of the Intersection of Old Ranch Road 12 and Wonder World Drive; including procedural provisions; and providing an effective date.
5. Consider approval of Ordinance 2020-62, on the second of two readings, amending the official zoning map of the City in Case No. ZC-20-15 (La Cima Phase 2), by rezoning approximately 89.694 acres out of the John Williams Survey, Abstract no. 490, and the William Smithson Survey, Abstract No. 419, Hays County, generally located West of the intersection of Old Ranch Road 12 and Wonder World Drive, from "FD" Future Development District to "SF-4.5" Single Family-4.5 District; including procedural provisions; and providing an effective date.

6. Consider approval of Ordinance 2020-63, on the second of two readings, amending the Official Zoning Map of the City (ZC-20-17), by rezoning approximately 38.019 acres of land, more or less, located at 2801 Staples Road, from “FD” Future Development District to “LI” Light Industrial District; and including procedural provisions.
7. Consider approval of Ordinance 2020-64, on the second of two readings, amending the Official Zoning Map of the City in Case No. ZC-20-18, by rezoning approximately 30.326 acres of land located at 2801 Staples Road from “FD” Future Development District to “CD-5” Character District-5; including procedural provisions; and providing an effective date.
8. Consider approval of Ordinance 2020-65, on the second of two readings, amending the Official Zoning Map of the City (ZC-20-19), by rezoning approximately 78.853 acres of land located at 2801 Staples Road, from “FD” Future Development District to “CD-4” Character District-4; and including procedural provisions.
9. Consider approval of Ordinance 2020-66, on the second of two readings, amending the Official Zoning Map of the City (ZC-20-20), by rezoning approximately 220.023 acre of land located at 2801 Staples Road, from “FD” Future Development District to “CD-3” Character District-3, and including procedural provisions.
10. Consider approval of Ordinance 2020-67, on the second of two readings, increasing rates established for Water, Wholesale Water, Reclaimed Water, Wastewater Treatment, and Sewer Surcharges; and including procedural provisions; and providing an effective date.
11. Consider approval of Ordinance 2020-68, on the second of two readings, amending the rates for both Residential and Multifamily Customers of Municipal Solid Waste Programs (currently known as Resource Recovery) in accordance with Section 66.028 of the San Marcos Code of Ordinances; and including procedural provisions; and providing an effective date.
12. Consider approval of Ordinance 2020-69, on the second of two readings, increasing Drainage Utility Rates as authorized by Section 86.505 of the San Marcos City Code; including procedural provisions; and providing an effective date.
13. Consider approval of Ordinance 2020-73, on the second of two readings, amending section 26.002 of the San Marcos City Code to establish that the City will implement the National Incident Management System (“NIMS”) as its model for managing public safety emergencies and incidents; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.
14. Consider approval of Ordinance 2020-74, on the second of two readings, providing for the temporary reduction in sewer surcharges for commercial utility customers during the COVID-19 Pandemic; providing procedural provisions; and providing an effective date.

15. Consider approval of Resolution 2020-192R, approving the San Marcos Transit Plan, also referred to as the Five-Year Strategic Plan for Transit Service; and declaring an effective date.
16. Consider approval of Resolution 2020-193R, approving a Public Transit System Interlocal Agreement with the Capital Area Rural Transportation System ("CARTS") for CARTS to provide transit services on behalf of the City in the San Marcos urbanized area, with a funding amount by the City not to exceed \$2,490,359.00; authorizing the City Manager, or his designee, to execute the agreement on behalf of the City; and declaring effective date.
17. Consider approval of Resolution 2020-194R, approving a Change in Service to the agreement with Freeit Data Solutions, Inc. through the Texas Comptroller of Public Accounts Department of Information Resources ("DIR") program for license renewal of security software in the estimated annual amount of \$18,512.61 and authorizing three additional annual renewals; authorizing the City Manager or his designee to execute the appropriate documents to implement the Change in Service; and declaring an effective date.
18. Consider approval of Resolution 2020-195R, approving a Change in Service to the agreement with SHI Government Solutions, Inc. for renewal of the Adobe Enterprise software license in the amount of \$41,695.00 and authorizing three additional annual renewals; authorizing the City Manager or his designee to execute the appropriate documents to implement the Change in Service; and declaring an effective date.
19. Consider approval of Resolution 2020-196R, approving an agreement with Graybar Electric through the US Communities (Omnia Partners) Cooperative for Solar LED Lighting for the Parks and Recreation Department to install outdoor lighting with solar powered, high efficiency light bulbs in the amount of \$55,498.00; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring effective date.
20. Consider approval of Resolution 2020-197R, approving a Change in Service to the agreement with Eggemeyer Land Clearing, LLC for wood grinding services to authorize an increase in the annual amount to \$62,250.00 and authorize four additional one-year terms; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.

**A motion was made by Council Member Derrick, seconded by Mayor Hughson, to approve Resolution 2020-197R. There were questions as to what is the amount for this year and the total of the contract. This is the amount for this year. The motion carried by the following vote:**

**For:** 6 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales

**Against:** 0

**Absent:** 1 - Council Member Marquez

21. Consider approval of Resolution 2020-198R, approving a Change in Service to the agreement with Texas Disposal Systems, Inc. for collection and disposal of solid waste and recyclable materials to extend the agreement for five years at an estimated annual increase of \$400,000.00; authorizing the City Manager or his designee to execute the Change in Service on behalf of the City; and declaring an effective date.

**A motion was made to deny by Mayor Pro Tem Mihalkanin, seconded by Council Member Gonzales.**

**Council held discussion and staff addressed concerns regarding agreement for a five year agreement with Texas Disposal Systems (TDS).**

**Mayor Hughson stated she appreciates all that TDS has provided for us, including some services at no cost. It is a good idea to look around, but sometimes re-bidding results in a higher cost. Mayor Hughson asked if a two year contract could be considered while we do a request for proposal (RFP) since staff indicated this typically takes 18 months. Staff indicated they could negotiate a contract for a shorter term, but this may change the cost of the contract. We would also lose the 3% fee annual increase that TDS waived for this year.**

**Council Member Derrick stated the partnership with TDS seems very unique.**

**Amy Kirwin, Community Enhancement Initiatives Manager, highlighted extra services TDS provides for the City including some at no additional cost. She also indicated how we differ from other communities in our area due to having a large University that makes up a large a majority of the City.**

**Dr. Mihalkanin asked how long this contract has been in effect and if 18 months is needed for an RFP, why wasn't this on an agenda 18 months ago. Ms. Kirwin stated 2003 when we did an RFP, the previous contractor was with BFI. She noted that 18 months ago her department was moved into an area that was being re-organized. Dr. Mihalkanin noted the value in doing an RFP more often.**

**Mayor Hughson asked about the expiration date of the contract. Ms. Kirwin responded September 30 of this year. She asked what will happen if the motion to deny passes. Director Stapp said that they can negotiate with TDS for a time period to cover trash pickup.**

**Mr. Gonzales would like to do the RFP process and is willing to contract for two years.**

**Mayor Hughson asked Mr. Cosentino what options we have since the agenda is posted for a five year contract. He advised we could instruct staff to inquire about a shorter contract. Whether or not the company will agree remains to be seen.**

**Dr. Mihalkanin rescinded his motion to deny due to the expiration date. Mr. Gonzales rescinded his second.**

**A motion was made by Mayor Hughson, seconded by Deputy Mayor Pro Tem Rockeymoore, to approve Resolution 2020 198R, amended by striking “five years” and inserting “two years” and authorizing staff to negotiate a two year contract with Texas Disposal System. The motion to approve as amended carried by the following vote:**

**For:** 6 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales

**Against:** 0

**Absent:** 1 - Council Member Marquez

- 22.** Consider approval of Resolution 2020-199R, approving an agreement with Doucet & Associates for Preliminary Engineering and Environmental Services for the Rio Vista Drainage Improvement Project in the estimated amount of \$69,695.00; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.
- 23.** Consider approval of Resolution 2020-200R, approving an Interlocal Agreement between Texas State University and the City for the implementation of restoration work in the Sessom Creek Natural Area funded through the Texas State University Watershed Protection Plan Program; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.

## **PUBLIC HEARINGS**

- 25.** Receive a Staff presentation and hold the second of two public hearings to receive comments for or against Ordinance 2020-70, adopting a budget in the amount of \$258,741,410 for the fiscal year beginning October 1, 2020 and ending September 30, 2021; authorizing certain adjustments to the budget with the approval of the City Manager; approving fiscal year 2020-2021 Capital Improvements Program Projects; adopting a fee schedule; including procedural provisions; providing an effective date; consider approval of Ordinance 2020-70 on the second of two readings.

Mayor Hughson stated this is this is second public hearing on the City's proposed fiscal year 2020-2021 annual budget which begins on October 1, 2020 and extends through September 30, 2021. The first public hearing was held on September 1. The proposed budget has been on file in the City Clerk's Office since August 14 as required by State law and available for review at the San Marcos Public Library. There are no changes since the last public hearing.

Mayor Hughson opened the Public Hearing at 8:04 p.m.

Those who spoke:

Lisa Marie Coppoletta, spoke on the issue of mold in City Hall and she said the City needs to remedy this situation. She spoke on the sidewalk on her block and the speed bumps on her street and the expenses associated with these projects. She mentioned the number of studies done on her street and her disappointment with certain City staff.

There being no further comments, the Mayor closed the Public Hearing at 8:07 p.m.

**MAIN MOTION:** a motion was made by Council Member Derrick, seconded by Deputy Mayor Pro Tem Rockeymoore, to approve Ordinance 2020-70, on the second of two readings.

**MOTION TO AMEND:** A motion was made by Mayor Hughson, seconded by Mayor Pro Tem Mihalkanin, to amend Ordinance 2020-70, on the second of two readings, by adding the following language to the end of (c), (d), and (e) of Sec. 3: " with notification to city council when complete"

The section will now read:

**SECTION 3.** The City Manager is authorized to make the following adjustments to the 2020-2021 Annual Budget without further approval from the City Council:

- (a) Transfers of funds among the accounts within each department;
- (b) Transfers of funds within an operating fund;
- (c) Transfers of funds for construction projects and equipment purchases from operating accounts to Capital Improvements Program accounts; with notification to city council when complete;
- (d) Reclassification of positions within each department; with notification to city council when complete; and
- (e) Decreases in operating accounts in response to decreases in City revenues or

**other circumstances, where the decreases do not result in a transfer of funds to another account with notification to city council when complete.**

**The motion to amend carried by the following vote:**

**For:** 6 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales

**Against:** 0

**Absent:** 1 - Council Member Marquez

**MAIN MOTION: to approve Ordinance 2020-70, on the second of two readings, as amended. The motion carried by the following vote:**

**For:** 6 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales

**Against:** 0

**Absent:** 1 - Council Member Marquez

28. Consider approval, by motion, of the ratification of the tax rate reflected in the proposed budget of 59.30 cents per \$100 valuation, which will raise more revenue from property taxes than in the previous fiscal year.

**Mayor Hughson stated this item is being considered before the tax rate item as required by State law. State law requires a separate motion to ratify the property tax rate reflected in the budget when more revenue will be raised from property taxes than in the previous year. Mayor Hughson noted that this is the first time the tax rate may be reduced in many years. It remained the same until the voters approved an increase for multiple bond projects in 2017.**

**A motion was made by Council Member Baker, seconded by Council Member Derrick, to approve the tax rate reflected in the proposed budget of 59.30 cents per \$100 valuation. The motion carried by the following vote:**

**For:** 6 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales

**Against:** 0

**Absent:** 1 - Council Member Marquez

26. Receive a Staff presentation and hold a public hearing to receive comments for or against Ordinance 2020-72, setting the tax rate for the 2020 Tax Year at 59.30 cents on each \$100 of taxable value of real property that is not exempt from taxation; levying taxes for the use and support of the Municipal Government of the City for the fiscal year

beginning October 1, 2020, and ending September 30, 2021; providing a sinking fund for the retirement of the bonded debt of the city; including procedural provisions; and providing an effective date; and consider approval of Ordinance 2020-72, on the second of two readings.

**Mayor Hughson stated that although City Council meetings have been virtual meetings since the Governor enacted a Disaster Declaration several months ago, the City is holding an in person public hearing on the tax rate this evening because it is a requirement in State law that has not been waived by the Governor. Social distancing measures are being followed.**

**City Council approved the tax rate ordinance on the first reading on September 1. This agenda item is for the City Council to consider the tax rate ordinance on the second reading and actually adopt the 2020 tax rate. The motion to approve the tax rate ordinance must be worded as specified in State law.**

**Melissa Neel, Assistant Director of Finance, stated the tax rate of 59.30¢ is 4.9% higher than the no new revenue tax rate of 56.50¢. The no new revenue tax rate is the rate that effectively generates the same amount of revenue on the same properties as last tax year. A tax rate of 59.30¢ will generate 7.9% more revenue than last year or \$2.7M, of that \$1.5M was from new property. The previous tax rate was 61.39¢. The saving will be \$21.00 per \$100,000 of value.**

**Mayor Hughson opened the Public Hearing at 8:18 p.m.**

**Those who spoke:**

**Lisa Marie Coppoletta, spoke on property taxes and the increase property owners are seeing in the community. Low income, fixed incomes and senior citizens are being impacted.**

**There being no further comments, the Public Hearing was closed at 8:22 p.m.**

**A motion was made by Deputy Mayor Pro Tem Rockeymoore, seconded by Council Member Baker, to approve Ordinance 2020-72, on the second of two readings. The motion carried by the following vote:**

**For:** 6 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales

**Against:** 0

**Absent:** 1 - Council Member Marquez

**NON-CONSENT AGENDA**

27. Consider approval of Ordinance 2020-76, on the first of two readings, amending Article 3 of Chapter 66 of the San Marcos City Code to transfer oversight responsibility for permitting commercial solid waste haulers from the Public Services Department to the Neighborhood Enhancement Department and increasing the permit fee to 7% of gross revenues; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.

**A motion was made by Council Member Baker, seconded by Mayor Pro Tem Mihalkanin, to approve Ordinance 2020-76, on the first of two readings. The motion carried by the following vote:**

**For:** 6 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales

**Against:** 0

**Absent:** 1 - Council Member Marquez

29. Discuss and consider an appointment to the Alliance Regional Water Authority (ARWA) Board of Directors, and provide direction to staff.

**Melissa Neel, Assistant Director of Finance, was approved unanimously to fill the vacancy on the Alliance Regional Water Alliance.**

30. Discuss and consider an appointment to serve as the delegate for the Texas Municipal League Business Meeting, and provide direction to Staff.

**Mayor Hughson and Council Member Baker both indicated interest in serving as a delegate for the Texas Municipal League Business meeting. After a roll call vote, Mayor Hughson received a majority of the votes and was selected at the City's delegate.**

**Hughson: Council Member Derrick, Council Member Gonzales, Mayor Pro Tem Mihalkanin, and Mayor Hughson.**

**Baker: Deputy Mayor Pro Tem Rockeymoore, Council Member Baker**

31. Receive a Staff presentation and hold discussion on the formation of a Community Development Block Grant - Mitigation (CDBG-MIT) Advisory Committee; and provide direction to Staff.

**Michael Ostrowski, Assistant Director of Planning and Development Services, provided a brief presentation. The City's Community Development Block Grant Mitigation Grant (CDBG-MIT) was adopted by Council in March and approved by the Housing of Urban Development (HUD) in June. The grant was allocated in approximately \$24M. The next step in the process is the creation of a Citizen Advisory Committee which is federally required. This**

**committee must meet twice per year at a minimum, the composition is open to citizens, not elected officials and it must be a newly created committee just for this purpose.**

**The Advisory Committee per HUD:**

- 1) Provide increased transparency in the implementation of CDBG–MIT funds, and**
- 2) Solicit and respond to public comment and input regarding the grantee’s mitigation activities, and**
- 3) Serve as an on-going public forum to continuously inform the grantee’s CDBG–MIT projects and programs.**

**The charge of this committee:**

- 1) Transparency: advise on best means of keeping the public informed**
- 2) Input: consider actual and perceived project impacts on neighborhoods**
- 3) Forum: recommendations for smooth implementation**

**Potential composition includes a committee of five members of the Planning and Zoning Commission because they are knowledgeable of infrastructure project selection processes, they are all citizens, not elected officials and they are familiar with neighborhood impacts and with receiving public input on projects.**

**Mayor Hughson inquired about the length of time this committee would be in existence. The committee will remain in place until all grant money is expended. She also inquired about membership on this board, which is not permanent, and on other boards and commissions. City Attorney Cosentino and Interim City Clerk Tammy Cook noted that we allow members on a temporary board, even if someone is already on a permanent board or commission.**

**Council Member Derrick would like to open this up to any members of the Planning and Zoning Commission (PZC) that would be interested in serving.**

**Council Member Baker would like to open this up to more than just members of the PZC and having at large members.**

**After Council discussion, consensus is to open up the membership to any member that is willing to serve from the PZC and two members from the Parks and Recreation Board.**

- 32. Discuss and consider the creation, appointment and implementation of an Ad Hoc**

Council-appointed committee charged with reviewing the Police Department's use of force policy; and provide direction to City Manager.

**Bob Klett, Interim Chief of Police stated that on July 7 during a special meeting there was discussion on Use of Force and associated policies and best practices. There was a national Town Hall meeting held by former President Obama had suggested Mayors review use of force policies with their community. Chief Klett stated that council's direction was to have an ad hoc committee.**

**Chief Klett stated clarification is needed on the pathway for the report to be brought before council. He is also asking the desired involvement of the Chief Advisory Panel and the Criminal Justice Reform Council Committee. Should there be a deadline**

**on this committee or allow it to continue until the report is complete? After council discussion, consensus is to create an ad hoc committee to take the following steps for reporting to council. The Ad Hoc Committee will meet and create a report, report will go to council and Chief Advisory Panel at the same time. The Chief Advisory Panel will meet once or twice to review and make recommendations or changes to the report. Then the Chief Advisory Panel's report will go to the Chief and a report will be made to council and when council receives the report, council will decide if it needs to be sent to Criminal Justice Reform Committee for any additional review.**

**Discussion was also held regarding residency requirements of applicants that wish to serve on the Ad Hoc Committee. Consensus was not reached by regarding residency requirements and if one member would be allowed to live in the Extra Territorial Jurisdiction (ETJ). Council will discuss this further at the next council meeting. to make a decision to have the ad hoc committee open to city residents only or include one extra-territorial jurisdiction (ETJ) resident.**

**Discussion was held regarding the time frame this committee needs to complete the report. Council consensus is to allow the committee 6 months to complete the report, but if more time is needed they will notify council in order to extend this time.**

- 33. Hold discussion regarding Section 2.042 of the City Code relating to the Order of Business for Regular City Council meetings; and provide direction to Staff.**

**Mayor Hughson asked to add this item to the agenda to discuss the order of business, specifically Public Hearings. There was, at one time, a specific time for Public Hearings but this has created some concerns in the past.**

**Mr. Lumbreras spoke briefly on the benefit of utilizing technology and videoconferencing software, such as zoom, even when meetings are held in person. This would allow staff and outside presenters to conference into a meeting virtually allowing them to participate without being physically present and for outside consultants, not having to pay for travel.**

**Discussion was held regarding the ability to allow citizens to participate virtually without being physically present. This is allowable by law, with restrictions, but staff will have to look into what technology would be need to be put in place to accommodate.**

**After discussion, consensus was to leave the order of business as is for council meetings.**

- 34. Hold discussion regarding the United States Postal Service (USPS) re-location of retail services from the San Marcos Post Office.**

**Mayor Pro Tem Mihalkanin and Deputy Mayor Pro Tem Rockeymoore requested a discussion item relating to the re-location of the San Marcos United States Postal Service (USPS).**

**Mr. Lumbreras stated the City received a letter in October 2018 that a decision had been made to relocate the postal service. Mr. Lumbreras stated that he called and expressed concerns but the USPS stated the decision had already been made. Mr. Lumbreras stated that USPS held a public meeting and they continued to move forward with the decision. Mr. Lumbreras mentioned that staff did send suggestions of different locations and in January 2019, the Mayor received a letter on a final decision of relocating the USPS.**

**Mayor Pro Tem Mihalkanin expressed concerns with the new location and how the driveway is badly designed with an angle to the street that has too much of a curve. Mayor Pro Tem Mihalkanin stated the people who are making the decisions on the location is creating poor access for the public. Mayor Pro Tem Mihalkanin, with support of Council, would like to submit a letter that communicates to congress that this relocation decision by the post office negatively affects the community.**

**Council consensus is to bring a Resolution forward at the October 7th City Council meeting indicating the displeasure of the relocation of the post office. If approved this Resolution would be sent to the entire congressional delegation.**

35. Receive an update and hold discussion on the road closures connected to the West Hopkins Street project; and provide direction to Staff.

**Mayor Pro Tem Mihalkanin and Mayor Hughson requested this item to be added to the agenda.**

**Mayor Pro Tem Mihalkanin expressed his concerns with the closure of a major street and how this causes disruption. Mayor Pro Tem Mihalkanin suggested opening streets to thru traffic on residential streets, incorporate speed limits that ensure safety and enforce them, and open multiple streets for flow of traffic. He also suggested placing stop signs with flashing lights on West San Antonio Street since they are not at every cross street. This would improve safety by attracting the driver's attention. Mayor Hughson suggested reflective strips on the stop signs, more driver feedback signs, and stated closing all the streets is not working. Heavy trucks must use the detours.**

**Council Member Baker stated numerous complaints are being made from businesses and individuals due to these closures. The city should enforce that heavy trucks are not to use detours through neighborhoods.**

**Mayor Hughson asked for the speed limits to be kept at a lower level.**

**Council Member Derrick noted the need to keep Harvey Street closed to through traffic.**

**Richard Reynosa, Senior Engineer provided a brief presentation on the Hopkins Street Improvements Project from Bishop to Moore Street. Mr. Reynosa stated the challenges of the traffic control plan is to find an alternative route to Hopkins Street traffic to assist with the 16,000 vehicles per day, as there are no nearby convenient detour routes.**

**Mr. Reynosa stated the goals are to look for safe routes that are efficient and have adequate capacity. Mr. Reynosa is looking for new options and will continue to adjust and he stated that success depends on driver willingness to follow detour routes safely.**

**Mayor Hughson asked if the police department are issuing tickets for those that are in the area who are not in their destination. Chief Klett stated that officers are patrolling but not stopping vehicles just for going through barricades. Their focus is on speeding and running stop signs. They are no longer writing tickets just for driving on those streets.**

**Council Member Baker suggested reducing the speed limit in the area to 20 mph to discourage people from driving through the area. Council Member Baker asked how does an officer determine if someone is going 20 mph versus 25 or 30 mph. Chief Klett stated it is easier to visualize people speeding so it will easier for enforcement with the reduction of the speed limit.**

**Mayor Hughson asked if citizens have submitted petitions in order to reduce speed and if there was also a traffic study done. Sabas Avila, Assistant Director of Public Services indicated that state laws establish speed limits, the law states we have to conduct a traffic study and the city does have the ability to reduce speed to 25 mph, if the speed on that street is deemed unsafe or unreasonable. Mr. Avila stated that the traffic study has to determine higher speed is not safe or it is unreasonable to make it lower than 30 mph. Staff looks at the speed, characteristic of the road, is it residential area, does it have a narrow way or located near a school to justify the reduction of speed. Mr. Avila confirmed that the city can reduce to only 25 mph.**

**Mayor Pro Tem Mihalkanin asked if the city does not have to do a traffic study, if there is change due to road conditions. Mr. Avila stated staff can consider the traffic study to lower speed limit. Mayor Hughson asked if we can do a temporary speed limit. Mr. Avila stated we can do that quickly as it requires city engineer and chief of police to approve the temporary speed limit for 90 days. Mr. Avila stated that during the 90 days, staff uses the time to do a traffic study and come back to establish an ordinance for reduction of speed limit.**

**Joe Pantalione, Assistant City Manager, stated that they will be looking into a temporary speed reduction but will be working on a long term solution for the length of the project.**

## **EXECUTIVE SESSION**

- 36.** Executive Session in accordance with §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding pending litigation, to wit: The Mayan at San Marcos River, LLC and City of Martindale v. City of San Marcos, Docket No. 04-19-00018-CV in the 4th Court of Appeals of Texas.

**No Executive Session was needed this evening.**

## **ACTION/DIRECTION FROM EXECUTIVE SESSION**

- 37.** Consider action, by motion, regarding the following Executive Session items held during the Work Session and/or Regular Meeting: §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding pending

litigation, to wit: The Mayan at San Marcos River, LLC and City of Martindale v. City of San Marcos, Docket No. 04-19-00018-CV in the 4th Court of Appeals of Texas.

**Mayor Hughson stated that direction was provided to staff during the Executive Session held during the work session earlier this evening.**

IV. Adjournment.

**Mayor Hughson adjourned the regular meeting of the City Council at 11:22 p.m. on September 15, 2020.**

**Tammy K. Cook, Interim City Clerk**

**Jane Hughson, Mayor**



# City of San Marcos

630 East Hopkins  
San Marcos, TX 78666

## Special Meeting Minutes City Council

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Wednesday, September 23, 2020

6:00 PM

Virtual Meeting - Executive Session

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**This meeting was held using conferencing software due to Covid-19 rules.**

### I. Call To Order

**With a quorum present, the special meeting of the San Marcos City Council was called to order by Mayor Hughson at 6:04 p.m. Wednesday, September 23, 2020. This meeting was held virtually.**

### II. Roll Call

**Present:** 7 - Council Member Melissa Derrick, Mayor Jane Hughson, Mayor Pro Tem Ed Mihalkanin, Council Member Joca Marquez, Deputy Mayor Pro Tem Mark Rockeymoore, Council Member Maxfield Baker and Council Member Saul Gonzales

### EXECUTIVE SESSION

1. Executive Session in accordance with Section §551.074 of the Texas Government Code: Personnel Matters - to receive an introduction to and hold discussion with the finalists for the Police Chief Position with the San Marcos Police Department.

**A motion was made by Council Member Gonzales, seconded by Deputy Mayor Pro Tem Rockeymoore, to enter into Executive Session at 6:06 p.m. The motion carried by the following vote:**

**For:** 7 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Council Member Marquez, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales

**Against:** 0

### ACTION/DIRECTION PROVIDED DURING EXECUTIVE SESSION

2. Consider action, by motion, or provide direction to Staff regarding the following Executive Session item in accordance with Section §551.074 of the Texas Government Code: Personnel Matters - to receive an introduction to and hold discussion with the finalists for the Police Chief Position with the San Marcos Police Department.

**Mayor Hughson stated introductions and discussions were held with the finalists for the Police Chief Position with the San Marcos Police Department.**

### III. Adjournment.

**A motion was made by Council Member Gonzales, seconded by Council**

**Member Baker, to adjourn the special meeting of the City Council on Wednesday, September 23, 2020 at 8:49 p.m. The motion carried by the following vote:**

**For:** 5 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Council Member Baker and Council Member Gonzales

**Against:** 0

**Absent:** 2 - Council Member Marquez and Deputy Mayor Pro Tem Rockeymoore

**Tammy K. Cook, Interim City Clerk**

**Jane Hughson, Mayor**



# City of San Marcos

## Special Meeting Minutes

### City Council

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Tuesday, September 29, 2020

4:00 PM

Virtual Meeting

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**This meeting was held using conferencing software due to the COVID-19 rules.**

#### I. Call To Order

**With a quorum present, the work session of the San Marcos City Council was called to order by Mayor Hughson at 4:00p.m. Tuesday, September 29, 2020. The meeting was held virtually.**

#### II. Roll Call

**Present:** 7 - Council Member Melissa Derrick, Mayor Jane Hughson, Mayor Pro Tem Ed Mihalkanin, Council Member Joca Marquez, Deputy Mayor Pro Tem Mark Rockeymoore, Council Member Maxfield Baker and Council Member Saul Gonzales

#### PRESENTATIONS

1. Receive a Staff update and hold a discussion regarding the agreement with Texas Disposal Systems, Inc. for collection and disposal of solid waste and recyclable materials, and provide direction to the City Manager.

**Bert Lumbreras, City Manager provided a brief update on this item and reminded Council this item was discussed at the Council meeting on September 15th. During that meeting, Council amended the resolution from a five-year extension to a 2-year contract extension with wording added that required agreement by Texas Disposal Systems (TDS) in order to take effect.**

**Staff spoke with TDS management and learned that they are not agreeable to a 2-year extension and are only agreeable to the five-year extension specified in the original contract. Since the current contract expires on September 30, this special called meeting was necessary to consider the contract. A recommendation for how to move forward was provided as backup for this meeting.**

**Given the nature of these services provided by TDS, Staff is recommending that Council approve a resolution granting the 5-year contract extension. Staff is sensitive to the concerns expressed by Council about the need to begin a Request For Proposal (RFP) process to ensure the best value for our residents.**

**As part of this recommendation, work will begin immediately with TDS to evaluate the services and rates currently provided by this contract and look for opportunities to achieve savings. If there are recommended changes, they will be brought back to Council.**

**Staff will begin the RFP process anytime during the term of this contract extension. The current contract only addresses residential, solid waste disposal, multifamily recycling and City facility services. Prior to initiating an RFP process staff will need citizen feedback and Council's direction regarding the services to be contracted. Some of the questions to ask are, should services remain the same or possibly add others such as multi-family trash, construction waste, or services for commercial businesses?**

**The discussion was opened to comments and questions by Council.**

**Mayor Hughson stated she is not dissatisfied with the services provided by TDS and she is in support of extending the contract but her reason for asking the question at the last meeting was to only to inquire about the Request for Proposal (RFP) Process and if it was time for a review. Mr. Lumbreras provided a brief summary of the process and the steps that will be taken moving forward.**

**Council Member Gonzales asked for clarification on Section 6.3 of the contract related to termination by the City. Michael Cosentino, City Attorney, explained that this section does allow the City to terminate the contract, but the City must not terminate with the intention of awarding an identical or similar contract to another company.**

**Chase Stapp, Director of Public Safety, stated the contract provides services as to what our needs are at this time. The next contract would meet the needs of the community at that particular time.**

**Mr. Gonzales expressed his displeasure of TDS not accepting a two-year contract, and he will not be supporting a five-year contract.**

**Council Member Derrick understands why TDS wants a five-year contract and appreciates all the services they provide. She did express her displeasure in not having a RFP in place just because we have utilized this company for so long. She would like a policy or process in place moving forward related to a RFP. She is in support, but she wants clear direction on how to handle this in the future.**

**Mr. Lumbreras, stated the last time a five year contract came up was in 2015 and this was when it included 2 five-year extensions. Staff will be reviewing the process and a system is in place to monitor the life of contracts and there will not be assumptions of extension, but they will put them out for bid or request periodically. If Council chooses to do a RFP during the life of this contract then staff will provide a recommendation to Council and what the impact will be on rates. Staff will come forward with a different recommendation prior to any RFP.**

**Council Member Baker, stated this needs to be looked at because recycling has changed since the initial contract was approved. Mr. Baker expressed his support of this renewal, and he hopes this does encourage more public outreach. TDS does a great job but these contracts do need to be monitored and looked at periodically.**

**Council Member Gonzales, asked what would happen if we did not approve the five year contract. Mr. Cosentino referenced what the contract states, but he is unable to speak on what action TDS would take. Mr. Stapp stated TDS would continue to serve the city without interruption until October 30th if the City were not to renew, after that date we would no longer have their services.**

**Council Member Rockey Moore asked the TDS representative what would happen after October 30th if Council did not approve the agreement. Rick Frauman, TDS representative, spoke on ways the contract could be restructured if that is the will of the Council. He stated there are long term expenses and equipment is continually purchased in order to maintain a high level of service for customers, therefore service agreements are put in place to maintain this service so a month to month contract is not sustainable.**

**Council Member Derrick commended TDS on all they have done in San Marcos. Mr. Frauman expressed his gratitude for the work by the city and enjoys the partnership with the City.**

**Council Member Baker stated that the City places a lot of emphasis on diversion through landfills and he stated that glass and plastic have been stockpiled due to market concerns. Is there any degradation to those items over time? He stated that he toured the Material Recovery Facility (MRF) in the past and he inquired about the degradation of certain items over time. What does TDS do to put these to use.**

**Mr. Frauman stated there are three separate carts and are picked up by three different truck so the landfill carts go to the landfill, items in single stream recycling go to the Material Recovery Facility, and the items in the green cart go to compost. There are some items that are low value and when items arrive at the MRF, they are separated. There is no material that just sits at the facility and it is sold regularly. Glass is stockpiled and they are currently looking for alternative ways to utilize the glass. In the first quarter of this year they invested into a large concrete facility in a way to re-use recyclable glass that is beneficial.**

**Council Member Gonzales commended TDS on the professionalism of their staff.**

**Council Member Baker stated the contamination rate has remained about the same over the years. He asked how does contamination enter into what needs to land filled? Mr. Frauman stated audits are conducted on an annual basis. At that time the truck will be dumped and the items are segregated to remove items that must be land filled, however, just because items may go to the landfill, does not mean the entire truck is considered contaminated.**

**Council Member Baker asked about trash and if a similar audit is done as it is for compost and recycling. Mr. Frauman stated this is not done at this time.**

**Council Member Derrick asked about Glass recycling and now that TDS has the concrete company, will this still be worthwhile for the City? Mr. Frauman stated this is still valuable because of the integrated services this facility will provide.**

**Staff will place this item on the October 7th City Council meeting for formal consideration of this contract and TDS will continue providing services on a day to day basis until considered.**

## **EXECUTIVE SESSION**

- 2. Executive Session in accordance with Section §551.074 of the Texas Government Code: Personnel Matters - To discuss the duties and responsibilities of the City Manager.**

**A motion was made by Council Member Gonzales, seconded by Mayor Pro Tem Mihalkanin, to enter into Executive Session at 4:55 p.m. The motion carried by the following vote:**

**For: 6 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Council Member Marquez, Council Member Baker and Council Member Gonzales**

**Against:** 0

**Absent:** 1 - Deputy Mayor Pro Tem Rockeymoore

### **ACTION/DIRECTION FROM EXECUTIVE SESSION**

3. Consider action, by motion, or provide direction to Staff regarding Executive Session item in accordance with Section §551.074 of the Texas Government Code: Personnel Matters - To discuss the duties and responsibilities of the City Manager.

**Council reconvened into Regular Session at 6:43 p.m. Mayor Hughson stated discussion was held during Executive Session.**

### III. Adjournment.

**A motion was made by Council Member Baker, seconded by Mayor Pro Tem Mihalkanin, to adjourn the special meeting of the City Council on Tuesday, September 29, 2020 at 6:45 p.m. The motion carried by the following vote:**

**For:** 4 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin and Council Member Baker

**Against:** 0

**Absent:** 3 - Council Member Marquez, Deputy Mayor Pro Tem Rockeymoore and Council Member Gonzales

**Tammy K. Cook, Interim City Clerk**

**Jane Hughson, Mayor**



Legislation Text

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**File #:** Ord. 2020-60(c), **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Ordinance 2020-60, on the second of two readings, amending Section 2.361 of the San Marcos City Code relating to the general powers and duties of the San Marcos Arts Commission and recommendations and decisions on funding made by the San Marcos Arts Commission; including procedural provisions; providing for the repeal of any conflicting provisions; and providing an effective date.

**Meeting date:** October 20, 2020

**Department:** Destination Services - Arts Commission

**Amount & Source of Funding**

**Funds Required:** n/a

**Account Number:** n/a

**Funds Available:** n/a

**Account Name:** n/a

**Fiscal Note:**

**Prior Council Action:** Council support given on March 17, 2020

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services

Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

June 19, 2019 Art Commission Meeting, proposed amendment to the Permanent Art Rules that would align the Arts Commission's allowed uses for Hotel Occupancy Tax allocations with those described in state law.

Currently, fifty percent of HOT allocations to the Arts Commission are allowed for permanent art (the other fifty percent funds the annual Arts and Cultural Grants program). However, State HOT allocation rules allow cities to use these funds for a wider range of uses, including: *instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms.*

The Arts Commission's intent is to broaden the allowed uses of the "50% HOT funds" beyond just permanent art (such as sculptures, statues, etc.), extending its permissible uses to the other art forms allowed by Texas Hotel Occupancy Tax allocation rules.

**Council Committee, Board/Commission Action:**

The Arts Commission approved Recommendation Resolution 2019-03RR, with a 6-1 vote, at the June 19, 2019 regular meeting.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends approval of the attached recommendation resolution.

**ORDINANCE NO. 2020-60**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING SECTION 2.361 OF THE SAN MARCOS CITY CODE RELATING TO THE GENERAL POWERS AND DUTIES OF THE SAN MARCOS ARTS COMMISSION AND RECOMMENDATIONS AND DECISIONS ON FUNDING MADE BY THE SAN MARCOS ARTS COMMISSION; INCLUDING PROCEDURAL PROVISIONS; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**SECTION 1.** Section 2.361 of the San Marcos City Code is hereby amended to expand the categories of art eligible for funding to track the categories authorized by State law. Added text is indicated by underlining and deleted text is indicated by strikethroughs.

Sec. 2.361. - General powers and duties; recommendations and decisions on funding and locations for permanent display art.

- (a) The arts commission will provide oversight for the expenditure of city hotel occupancy tax funds for the promotion of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms.
- (b) In consultation with the arts community, the arts commission will develop written guidelines regarding the process for allocation of hotel occupancy tax funds for the arts. In addition, the arts commission will recommend policies to govern placement of temporary and permanent display art on city property for approval by the city council, and the arts commission may adopt procedural guidelines for evaluating temporary and permanent display art.
- (c) At least 50 per cent of the amount of hotel occupancy tax funds allotted by the city council for the arts shall be expended for eligible projects that consist of public art ~~of permanent display art. "Permanent display art" includes sculpture, painting, or similar art work that is intended for permanent display in a public place or public building in the city for a period of more than one year.~~ 'Public art' includes those major art forms listed in part (a) that will enhance the arts and cultural life in San Marcos and encourage tourism to the city. Any such funding remaining unexpended at the end of a fiscal year will be retained in a capital improvement account for future spending for this purpose.
- (d) The arts commission is expressly authorized to:

- (1) Actively solicit interest in the submission of applications from qualified individuals, groups and companies for funding for permanent display art; and
- (2) Make recommendations to the city council for permanent display art, including recommendations made independently of funding applications.
- (e) With respect to applications for funding for permanent display art, the arts commission will make recommendations to the city council for awards of funding and proposed locations for permanent display art. The city council will make the final decision on funding and locations for permanent display art.
- (f) The arts commission will review all other applications for funding for the arts, and will make final decisions on all such applications.

**SECTION 2.** If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

**SECTION 3.** All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

**SECTION 4.** This ordinance shall become effective upon second reading.

**PASSED AND APPROVED** on first reading on October 7, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on October 20, 2020.

Jane Hughson  
Mayor

Attest:

Approved:

Tammy K. Cook  
Interim City Clerk

Michael J. Cosentino  
City Attorney



## RECOMMENDATION RESOLUTION

### Arts Commission

Recommendation Number: (2019-03RR): Amendment to Permanent Art Rules

WHEREAS, the use and allocation of state hotel occupancy tax revenue can go toward “the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms” (Sec. 351.101. USE OF TAX REVENUE); and

WHEREAS, the Arts Commission wishes to be able to fund other arts projects in addition to “permanent display art” as currently stated in the Code of Ordinances; and

WHEREAS, the mission statement of the Arts Commission is “*to support and contribute to the artistic vitality, diverse cultural heritage and economic prosperity of our city in an effort to distinguish it from other communities while promoting tourism to San Marcos*”;

NOW, THEREFORE, BE IT RESOLVED that the Arts Commission encourages the San Marcos City Council to amend the general powers and duties of the Arts Commission as stated in the Code of Ordinances (Chapter 2, Article 3, Division 16, Sec. 2.361 (c) to read, “At least 50 per cent of the amount of hotel occupancy tax funds allotted by the city council for the arts shall be expended for eligible projects that consist of public art. ‘Public art’ includes those major art forms listed in part (a) that will enhance the arts and cultural life in San Marcos and encourage tourism to the city. Any such funding remaining unexpended at the end of a fiscal year will be retained in a capital improvement account for future spending for this purpose.”

Date of Approval: June 19, 2019

Record of the vote: 6-1

Attest: Trey Hatt, Arts Coordinator

A handwritten signature in blue ink, appearing to be "Trey Hatt", written over a horizontal line.



## Legislation Text

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**File #:** Ord. 2020-78(b), **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Ordinance 2020-78, on the second of two readings, repealing Divisions 23 and 24 of Article 3, Chapter 2 of the San Marcos City Code that established the San Marcos Youth Commission and the San Marcos Commission on Children and Youth, respectively, in connection with the transitioning of the provision of Youth Services through the Core 4 Partnership with Hays County, Texas State University and the San Marcos Consolidated Independent School District; dissolving said commissions; including procedural provisions; and providing an effective date.

**Meeting date:** October 20, 2020

**Department:** Parks and Recreation

**Amount & Source of Funding**

**Funds Required:** None

**Account Number:** Click or tap here to enter text.

**Funds Available:** Click or tap here to enter text.

**Account Name:** Click or tap here to enter text.

**Fiscal Note:**

**Prior Council Action:** City Council approved the Ordinance on first reading on October 7<sup>th</sup>.

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

N/A

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.

- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Youth Master Plan

**Background Information:**

City Council approved this Ordinance on the 1<sup>st</sup> of 2 readings on October 7 without amendment. This will be the 2<sup>nd</sup> and final reading of the Ordinance.

The Core 4 (City of San Marcos, Texas State University, San Marcos Consolidated Independent School District, and Hays County) held a meeting on March of this year and it was decided that a Core 4 Task Force would be created which consisted of appointees from each jurisdiction. With the creation of the Core 4 Taskforce, the Core 4 discussed and agreed that the San Marcos Commission on Children and Youth (SMCCY) and the San Marcos Youth Commission (SMYC) should be dissolved due to the Taskforce and the two boards serving the same function.

The Core 4 Task Force would additionally have a subsidiary taskforce known as the Youth Taskforce. Both of these bodies will be advisory in nature to the Core 4 and will work directly with Community Action Inc. and the new Youth Services director on Youth Master Plan implementation.

**Council Committee, Board/Commission Action:**

On September 2, 2020, a joint meeting of the San Marcos Commission on Children and Youth and San Marcos Youth Commission was held. Both bodies consented to moving forward was stated above and on the attached memo.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends dissolving the SMCCY and the SMYC as City boards. Staff would like to see the Core Four Task Force function under The Core Four in conjunction with Community Action.

**ORDINANCE NO. 2020-78**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS REPEALING DIVISIONS 23 AND 24 OF ARTICLE 3, CHAPTER 2 OF THE SAN MARCOS CITY CODE THAT ESTABLISHED THE SAN MARCOS YOUTH COMMISSION AND THE SAN MARCOS COMMISSION ON CHILDREN AND YOUTH, RESPECTIVELY, IN CONNECTION WITH THE TRANSITIONING OF THE PROVISION OF YOUTH SERVICES THROUGH THE CORE 4 PARTNERSHIP WITH HAYS COUNTY, TEXAS STATE UNIVERSITY AND THE SAN MARCOS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT; DISSOLVING SAID COMMISSIONS; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

1. On February 18, 2020, the City Council approved a contract with Community Action Inc. of Central Texas for the provision of Youth Services. Community Action Inc. will provide personnel to as a Youth Services Director. The Youth Services Director will work with the City of San Marcos, Texas State University, San Marcos CISD, and Hays County (“Core 4”) to implement the recommendations and goals set forth by these entities and the Youth Master Plan.

2. The Core 4 has created a taskforce with their appointed representatives which will work with the Youth Services Director to implement the recommendations and goals set forth by the Core 4 and the Youth Master Plan. With the creation of the Core 4 Taskforce the San Marcos Commission on Children and Youth and Youth Commission will now be redundant and unnecessary in the implementation of the Youth Master Plan.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**SECTION 1.** Divisions 23 and 24, Chapter 2, Article 3, inclusive of Sections 2.370.24 – 2.370.27, of the San Marcos City Code are hereby repealed. The repealed divisions and sections shall be reserved for future codification.

**SECTION 2.** The San Marcos Youth Commission and the San Marcos Commission on Children and Youth created by and appointed pursuant to said divisions are hereby dissolved.

**SECTION 3.** In codifying the changes authorized by this ordinance, divisions, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

**SECTION 4.** If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

**SECTION 5.** All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

**SECTION 6.** This ordinance will take effect after its passage, approval and adoption on second reading.

**PASSED AND APPROVED** on first reading on October 7, 2020

**PASSED, APPROVED AND ADOPTED** on second reading on October 20, 2020.

Attest:

Jane Hughson  
Mayor

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney



# MEMO

**To:** Core 4 Members  
**FROM:** Drew Wells, Director of Parks and Recreation  
**DATE:** March 12, 2020  
**RE:** **Role of the Core 4 and Billing Proposal**

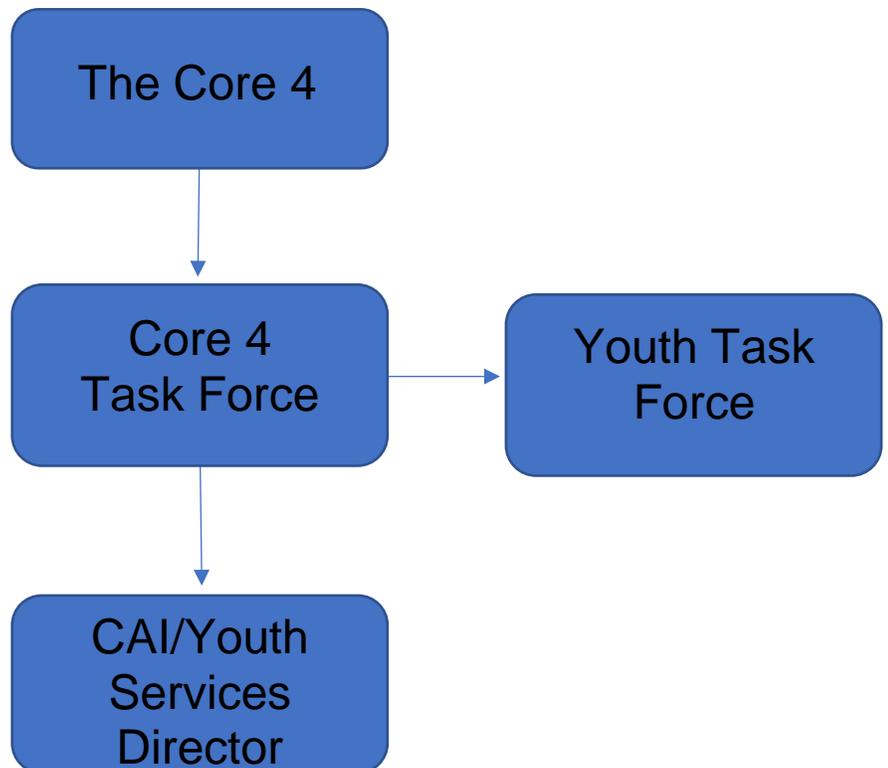
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**SUMMARY:**

The purpose of this memo is for City of San Marcos (COSM) staff to give their recommendation on the structure of the San Marcos Commission on Children and Youth (SMCCY) and the role of the Core 4 in relation to the Youth Services Director moving forward. We will also address the billing/funding process in relation to executed agreements.

**Recommendations of Role of the Core 4 from City staff:**

- Restructure SMCCY to become a Core 4 Task Force.
- The Core 4 Task Force would consist of two members from Hays County, two members from Texas State (TxState), two members from San Marcos Consolidated Independent School District (SMCISD) and three members from COSM.
- The Core 4 Task Force would be advisory directly to the Core 4 and would no longer function as a City Commission.
- The function of the Core 4 Task Force would be to work with the Youth Services Director under the direction of Community Action, Inc of Central Texas (CAI) on implementation of the Youth Master Plan.
- Create a Youth Task Force that will work as a subcommittee of the Core 4 Task Force.
- Members of Youth Task Force can be self-appointed by current members and/or Core 4 Task Force.



**Billing proposal from City staff:**

Staff would like to propose the following schedule for billing to each entity moving forward:

- The City's Finance Department will invoice each entity (Hays County, SMCISD and TxState) quarterly beginning April 1, 2020.
- Each entity will be billed for \$5,000 each quarter.
- Future billing dates will be on or around July 1, 2020, October 1, 2020 and January 1, 2021.
- The total billing for the current Fiscal Year will amount to \$10,000 for each entity.
- The contract will be in effect for two years with the start date of March 3, 2020.

END



Legislation Text

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**File #:** Ord. 2020-79(b), **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Ordinance 2020-79, on the second of two readings, reducing the speed limit from 30 miles per hour to 25 miles per hour along the 500-1200 blocks of Burleson Street between Moore Street and Prospect street; authorizing the installation of signs and traffic control devices reflecting the new speed limit; directing that the traffic register maintained under section 82.067 of the San Marcos City Code be amended to reflect the new speed limit; and including procedural provisions.

**Meeting date:** October 20, 2020

**Department:** Public Services Department (Tom Taggart)

**Amount & Source of Funding**

**Funds Required:** \$300

**Account Number:** 10006147.53230

**Funds Available:** \$38,893

**Account Name:** Traffic-Signs

**Fiscal Note:**

**Prior Council Action:** N/A

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.

- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Transportation Master Plan

**Background Information:**

Pursuant to Sec. 82.066 of the San Marcos City Code, the installation of regulatory traffic signs requires approval of the City Council if the authority is not specifically delegated to the traffic engineer.

The Public Services Department received a petition from residents on Burleson Street, between Moore Street and Prospect Street, to reduce the speed limit from 30 mph to 25 mph.

The city received 26 responses from 50 lots along Burleson Street in favor of 25 mph. The petition also included 6 responses near Burleson Street in favor of 25 mph.

Based on a speed study conducted during June 24-25, 2020, the average 85th percentile speed on Burleson Street is 33.9 mph. The roadway width is approximately 27 ft with curves and slopes. In between Moore St. and Prospect St, Burleson St. has all-way stop control at Scott St. intersection and Blanco St. There is no sidewalk along the roadway.

Texas Transportation Code, Section 545.356, gives authority to municipalities to alter speed limits to not less than 25 miles per hour, if the governing body determines that the prima facie speed limit is unreasonable or unsafe. Engineering studies conducted by the Transportation Division support the conclusion that the current posted speed of 30 m.p.h. is unreasonable and unsafe and the proposed 25 m.p.h. speed limit reflects the safe and prudent speed limit to maintain roadway safety especially for neighborhood bike and pedestrian traffic.

Additionally, the CIP Department in conjunction with the Public Services and Police Department will install temporary 25 mph speed limit for 90 days on San Antonio Street (Olive Street to Harvey Street) and Belvin St. (Bishop Street to Scott Street) as part of the Hopkins Reconstruction Project traffic control plan. The temporary 25 m.p.h. speed limits will be installed on September 25<sup>th</sup>, 2020. Following the completion of the engineering studies, permanent speed limit changes for San Antonio and Belvin Street, will be submitted for City Council consideration.

If supported by engineering studies, ordinances setting permanent 25mph speed limits on San

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**File #:** Ord. 2020-79(b), **Version:** 1

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Antonio St. and Belvin St. will be submitted to City Council for consideration on first reading on November 17<sup>th</sup> and final approval on December 6<sup>th</sup>, 2020.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Establish 25 mph speed zone for Burluson Street between Moore Street and Prospect Street.

**ORDINANCE NO. 2020-79**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS REDUCING THE SPEED LIMIT FROM 30 MILES PER HOUR TO 25 MILES PER HOUR ALONG THE 500-1200 BLOCKS OF BURLESON STREET BETWEEN MOORE STREET AND PROSPECT STREET; AUTHORIZING THE INSTALLATION OF SIGNS AND TRAFFIC CONTROL DEVICES REFLECTING THE NEW SPEED LIMIT; DIRECTING THAT THE TRAFFIC REGISTER MAINTAINED UNDER SECTION 82.067 OF THE SAN MARCOS CITY CODE BE AMENDED TO REFLECT THE NEW SPEED LIMIT; AND INCLUDING PROCEDURAL PROVISIONS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**SECTION 1.** Pursuant to Chapter 82 of the San Marcos City Code, and on the basis of finding that a decreased speed limit is reasonable and prudent, the speed limit along the 500-1200 blocks of Burleson Street between Moore Street and Prospect Street is hereby decreased from 30 miles per hour to 25 miles per hour.

**SECTION 2.** The City's traffic engineer is authorized to install such signs and traffic control devices as he deems appropriate to reflect the new speed limit.

**SECTION 3.** The traffic engineer is directed to amend the traffic register maintained under section 82.067 of the San Marcos City Code to reflect the new speed limit.

**SECTION 4.** If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

**SECTION 5.** All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

**SECTION 6.** This ordinance shall be effective upon its adoption on second reading.

**PASSED AND APPROVED** on first reading October 7, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading October 20, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney



City of San Marcos  
 630 E. Hopkins  
 San Marcos, Texas 78666

### 25 MPH SPEED LIMIT SURVEY

The City of San Marcos has received a request to reduce the speed limit to 25 mph at the location below. This survey serves to assess neighborhood/business consent of the proposed speed limit reduction. This survey will be used in conjunction with other City evaluations to assess the feasibility of this reduction or variation thereof. The results of this survey do not guarantee the reduction of the speed limit.

Street Name (for Reduction): BURLESON ST (e.g. Linde Lane)  
 Location or Block Numbers (for Reduction): FROM PROSPECT ST. TO MADRONE ST. (e.g. From River Rd to Buggy Ln or 600 - 1300 block)  
 Suggested Speed Limit: 25 MPH Speed Limit

| NAME (print)     | COMPANY             | ADDRESS            | PHONE NUMBER | APPROVE 25 MPH signs (check one)    |                          | SIGNATURE   |
|------------------|---------------------|--------------------|--------------|-------------------------------------|--------------------------|-------------|
|                  |                     |                    |              | YES                                 | NO                       |             |
| Maude Shell      | Palmer's Restaurant | 102-12 edwice      | 512-665-1899 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | [Signature] |
| Pravin Sengul    |                     | 904 Burleson St.   | 512-751-0730 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | [Signature] |
| John Barlow      |                     | 904 Burleson St.   | 512-353-2299 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | [Signature] |
| Joseph McMillan  |                     | 826 Burleson St.   | 512-648-7522 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | [Signature] |
| Arthur Heikinger | SAW LLC             | 826 Burleson St    | 488-181-6411 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | [Signature] |
| Lara Keeling     |                     | 828 Burleson St, B | 832-283-1823 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | [Signature] |
|                  |                     | 828 Burleson St, B | 512-785-5088 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | [Signature] |

Community Contact: NONNY BAGLEY Address: 736 BURLESON ST  
 Please Return to: Public Services Department - Transportation  
 630 E. San Marcos  
[TransportationInfo@sanmarco.tx.gov](mailto:TransportationInfo@sanmarco.tx.gov)  
 Phone: 512.393.1282

For questions, call 512-393-8036.



City of San Marcos  
 630 E. Hopkins  
 San Marcos, Texas 78666

**25 MPH SPEED LIMIT SURVEY**

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Street Name (for Reduction): BURLESON ST (e.g. Linda Lane)  
 Location or Block Numbers (for Reduction): PROSPECT ST TO MOORE ST (e.g. From River Rd to Bugg Ln or 600 - 1300 block)  
 Suggested Speed Limit: 25 MPH Speed Limit

| NAME (print)     | COMPANY | ADDRESS          | PHONE NUMBER | APPROVE 25 MPH signs (check one)    |                          | SIGNATURE       |
|------------------|---------|------------------|--------------|-------------------------------------|--------------------------|-----------------|
|                  |         |                  |              | YES                                 | NO                       |                 |
| CAROL RUSSELL    |         | 611 BURLESON ST. | 512-353-3220 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Carol Russell   |
| Darcy Kramer     |         | 612 Burleson St  | 512-458-1120 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Darcy Kramer    |
| Sienna Mulphish  |         | 626 Burleson St  | 512-389-8985 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Sienna Mulphish |
| DAVIDA WOODS     |         | 714 BURLESON     | 14 565 7523  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | David Wood      |
| JOHANNAK THAMSEN |         | 549 BURLESON     | 512-369-1749 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Johanna Thamsen |
| Stacey Cole      |         | 603 Burleson     | 512-644-6325 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Stacey Cole     |
| WFF Solder       |         | 603 Burleson     | 512-605-5229 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | WFF Solder      |

Community Contact: Donny Bagley Address: 736 BURLESON ST Phone: 512, 393, 1262

Please Return to: Public Services Department - Transportation  
 630 E. San Marcos  
[TransportationInfo@sanmarco.tx.gov](mailto:TransportationInfo@sanmarco.tx.gov)

For questions, call 512-393-8036.



City of San Marcos  
 630 E. Hopdins  
 San Marcos, Texas 78688

**25 MPH SPEED LIMIT SURVEY**

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Street Name (for Reduction): BURLESON ST (e.g. Linda Lane)  
 Location or Block Numbers (for Reduction): FARM PROSPECT ST. TO MOORE ST (e.g. From River Rd to Bugg Ln or 600 - 1300 block)  
 Suggested Speed Limit: 25 MPH Speed Limit

| NAME (print)    | COMPANY | ADDRESS            | PHONE NUMBER | APPROVE 25 MPH sign (check one)     |                          | SIGNATURE              |
|-----------------|---------|--------------------|--------------|-------------------------------------|--------------------------|------------------------|
|                 |         |                    |              | YES                                 | NO                       |                        |
| Donny Bagley    |         | 736 Burleson St    | 512 393 1262 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Donny Bagley</i>    |
| Erk Stephenson  |         | 719 Burleson St    | 512 497 7167 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Erk Stephenson</i>  |
| Diane Phalen    |         | 721 Burleson St    | 512 557 4154 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Diane Phalen</i>    |
| Scott Henning   |         | 721 Burleson St    | 512 557 6641 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Scott Henning</i>   |
| Todd O. DeKraak |         | 1410 Progress St   | 512 754 9321 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Todd O. DeKraak</i> |
| Todd Allen      |         | 724 Burleson St    | 512 352 0706 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Todd Allen</i>      |
| Karen Ford      |         | 500 Braune Terrace | 512 422 8234 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Karen Ford</i>      |

Community Contact: Donny Bagley Address: 736 Burleson St Phone: 512 393 1262

Please Return to: Public Services Department - Transportation  
 630 E. San Marcos  
 TransportationInfo@sanmarcos.gov

For questions, call 512-393-8036.



City of San Marcos  
 630 E. Hopkins  
 San Marcos, Texas 78668

**25 MPH SPEED LIMIT SURVEY**

The City of San Marcos has received a request to reduce the speed limit to 25 mph at the location below. This survey serves to assess neighborhood/business consent of the proposed speed limit reduction. This survey will be used in conjunction with other City evaluations to assess the feasibility of this reduction or variation thereof. The results of this survey do not guarantee the reduction of the speed limit.

Street Name (for Reduction): BURLESON ST (e.g. Linda Lane)  
 Location or Block Numbers (for Reduction): FROM PROSPECT ST TO MOORE ST (e.g. From River Rd to Bugg Ln or 600 - 1300 block)  
 Suggested Speed Limit: 25 MPH Speed Limit

| NAME (print)   | COMPANY | ADDRESS            | PHONE NUMBER | APPROVE 25 MPH signs (check one)    |                          | SIGNATURE             |
|----------------|---------|--------------------|--------------|-------------------------------------|--------------------------|-----------------------|
|                |         |                    |              | YES                                 | NO                       |                       |
| DAVY BASELEY   |         | 736 BURLESON ST    | 512 393 1262 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Davy Baseley</i>   |
| Lonnie Basley  |         | 736 Burleson       | 512 396 1009 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Lonnie Basley</i>  |
| Kathy Morley   |         | 804 Burleson       | 512 511 0119 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Kathy Morley</i>   |
| Duff Strubberg |         | 804 Burleson       | 512 520-6783 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Duff Strubberg</i> |
| Lydia Kendrick |         | 404 Browne Terrace | 512 753 9565 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Lydia Kendrick</i> |
| Sue Prather    |         | 400 Browne Terrace | 512 742 1811 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Sue Prather</i>    |
| Kathy Pickler  |         | 400 Browne Terrace | 512 781 9369 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Kathy Pickler</i>  |

Community Contact: DAVY BASELEY Address: 736 BURLESON ST Phone: 512 393 1262

Please Return to: Public Services Department - Transportation  
 630 E. San Marcos  
[TransportationInfo@sanmarcos.tx.gov](mailto:TransportationInfo@sanmarcos.tx.gov)

For questions, call 512-393-9036.



City of San Marcos  
 630 E. Hopkins  
 San Marcos, Texas 78668

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Street Name (for Reduction.): BURLESON ST (e.g. Linda Lane)  
 Location of Block Numbers (for Reduction.): FROM PROSPECT ST TO MOORE ST (e.g. From River Rd to Bugg Ln or 600 - 1300 block)  
 Suggested Speed Limit: 25 MPH Speed Limit

| NAME (print)  | COMPANY | ADDRESS              | PHONE NUMBER | APPROVE 25 MPH signs (check one)    |                          | SIGNATURE          |
|---------------|---------|----------------------|--------------|-------------------------------------|--------------------------|--------------------|
|               |         |                      |              | YES                                 | NO                       |                    |
| Donny Basley  |         | 736 Burleson St      | 512 3931262  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| Cherry Walts  |         | 1001 Burleson St     | 512/3937334  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| Charles Walts |         | 1001 Burleson St     | 512-391-8313 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| Stacy Douglas |         | 807 Highland Terrace | 512-357-6811 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
|               |         |                      |              |                                     |                          |                    |
|               |         |                      |              |                                     |                          |                    |

Community Contact: Donny Basley Address: 736 Burleson St Phone: 512 393 1262

Please Return to: Public Services Department - Transportation  
 630 E. San Marcos  
 TransportationInfo@sanmarcos.tx.gov

For questions, call 512-398-8036.



City of San Marcos  
 630 E. Hopkins  
 San Marcos, Texas 78666

**25 MPH SPEED LIMIT SURVEY**

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Street Name (for Reduction): \_\_\_\_\_ (e.g. Linda Lane)  
 Location or Block Numbers (for Reduction): \_\_\_\_\_ (e.g. From River Rd to Bugg Ln or 600 - 1300 block)  
 Suggested Speed Limit: 25 MPH Speed Limit

| NAME (print)  | COMPANY | ADDRESS            | PHONE NUMBER   | APPROVE 25 MPH signs (check one)    |                          | SIGNATURE          |
|---------------|---------|--------------------|----------------|-------------------------------------|--------------------------|--------------------|
|               |         |                    |                | YES                                 | NO                       |                    |
| Cherry Wells  |         | 1001 Burlinson St  | 512-391-3325   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| Johanna Zwick |         | 1125 Burlinson St  | 512-1557-0123  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| Sandy Walden  |         | 15017 Burlinson St | (512) 502-5132 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| TAMMY WALDEN  |         | 1017 Burlinson St  | (512) 657-1068 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| KEVIN COHN    |         | 925 Burlinson      | 512-391-1826   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| Jessan Brader |         | 925 Burlinson      | 512-392-5870   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| Wendy Morse   |         | 906 Burlinson      | 512-395-5837   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |

Community Contact: \_\_\_\_\_ Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Please Return to: Public Services Department - Transportation  
 630 E. San Marcos  
 TransportationInfo@sanmarcos.tx.gov

For questions, call 512-393-8036.



City of San Marcos  
 630 E. Hopkins  
 San Marcos, Texas 78666

### 25 MPH SPEED LIMIT SURVEY

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Street Name (for Reduction): BURLESON ST (e.g. Linda Lane)  
 Location or Block Numbers (for Reduction): BETWEEN PROSPECT & MOORE ST (e.g. From River Rd to Bugg Ln or 600 - 1300 block)  
 Suggested Speed Limit: 25 MPH Speed Limit

| NAME (print)          | COMPANY | ADDRESS               | PHONE NUMBER | APPROVE 25 MPH signs (check one)    |                          | SIGNATURE   |
|-----------------------|---------|-----------------------|--------------|-------------------------------------|--------------------------|-------------|
|                       |         |                       |              | YES                                 | NO                       |             |
| Bill ZASSEN KROEGER'S |         | 140 Progress St SUITE | 512/5449321  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | [Signature] |
| Robin Yellon          |         | 702 Burleson St.      | 713/494-7173 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | [Signature] |
| Ken Kellough          |         | 702 Burleson          | 713/4949153  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | [Signature] |
| MIKE DICKER           |         | 1000 BURLESON         | 512-393-7033 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | [Signature] |
|                       |         |                       |              |                                     |                          |             |
|                       |         |                       |              |                                     |                          |             |
|                       |         |                       |              |                                     |                          |             |

Community Contact: Denny BAELEY Address: 7316 BURLESON ST, SM 78666 Phone: 512.393.1262

Please Return to:  
 Public Services Department - Transportation  
 630 E. San Marcos  
 TransportationInfo@sanmarco.tx.gov

For questions, call 512-393-9036.



City of San Marcos  
 630 E. Hopkins  
 San Marcos, Texas 78666

**25 MPH SPEED LIMIT SURVEY**

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Street Name (for Reduction): BURLESON ST (e.g. Linda Lane)  
 Location or Block Numbers (for Reduction): FROM PROSPECT ST. TO MOORE ST (e.g. From River Rd to Bugs Ln or 800 - 1300 block)  
 Suggested Speed Limit: 25 MPH Speed Limit

| NAME (print)           | COMPANY | ADDRESS         | PHONE NUMBER | APPROVE 25 MPH signs (check one)    |                          | SIGNATURE          |
|------------------------|---------|-----------------|--------------|-------------------------------------|--------------------------|--------------------|
|                        |         |                 |              | YES                                 | NO                       |                    |
| DOVNY BASLEY           |         | 736 BURLESON ST | 512 393 1262 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| CAEL DEAR              |         | 902 BURLESON    | 502-719-8000 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| DIANNE PARE            |         | 400 BLANCO ST.  | 612-212-8574 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| DON GRAHAM             |         | 901 HILWARD TOR | 512-753-9888 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| Rodney Van Oude Korfke |         | 323 Scott       | 512-216-3454 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |

Community Contact: DOVNY BASLEY Address: 736 BURLESON ST Phone: 512 393 1262

Please Return to: Public Services Department - Transportation  
 630 E. San Marcos  
[TransportationInfo@sanmarcostrx.gov](mailto:TransportationInfo@sanmarcostrx.gov)

For questions, call 512-383-8036.



City of San Marcos  
 630 E. Hopkins  
 San Marcos, Texas 78668

**25 MPH SPEED LIMIT SURVEY**

The City of San Marcos has received a request to reduce the speed limit to 25 mph at the location below. This survey serves to assess neighborhood/business consent of the proposed speed limit reduction. This survey will be used in conjunction with other City evaluations to assess the feasibility of the reduction or variation thereof. The results of this survey do not guarantee the reduction of the speed limit.

Street Name (for Reduction): BURLESON ST (e.g. Linda Lane)  
 Location or Block Numbers (for Reduction): BETWEEN PROSPECT & MOORE ST (e.g. From River Rd to Bugg Ln or 600 - 1300 block)  
 Suggested Speed Limit: 25 MPH Speed Limit

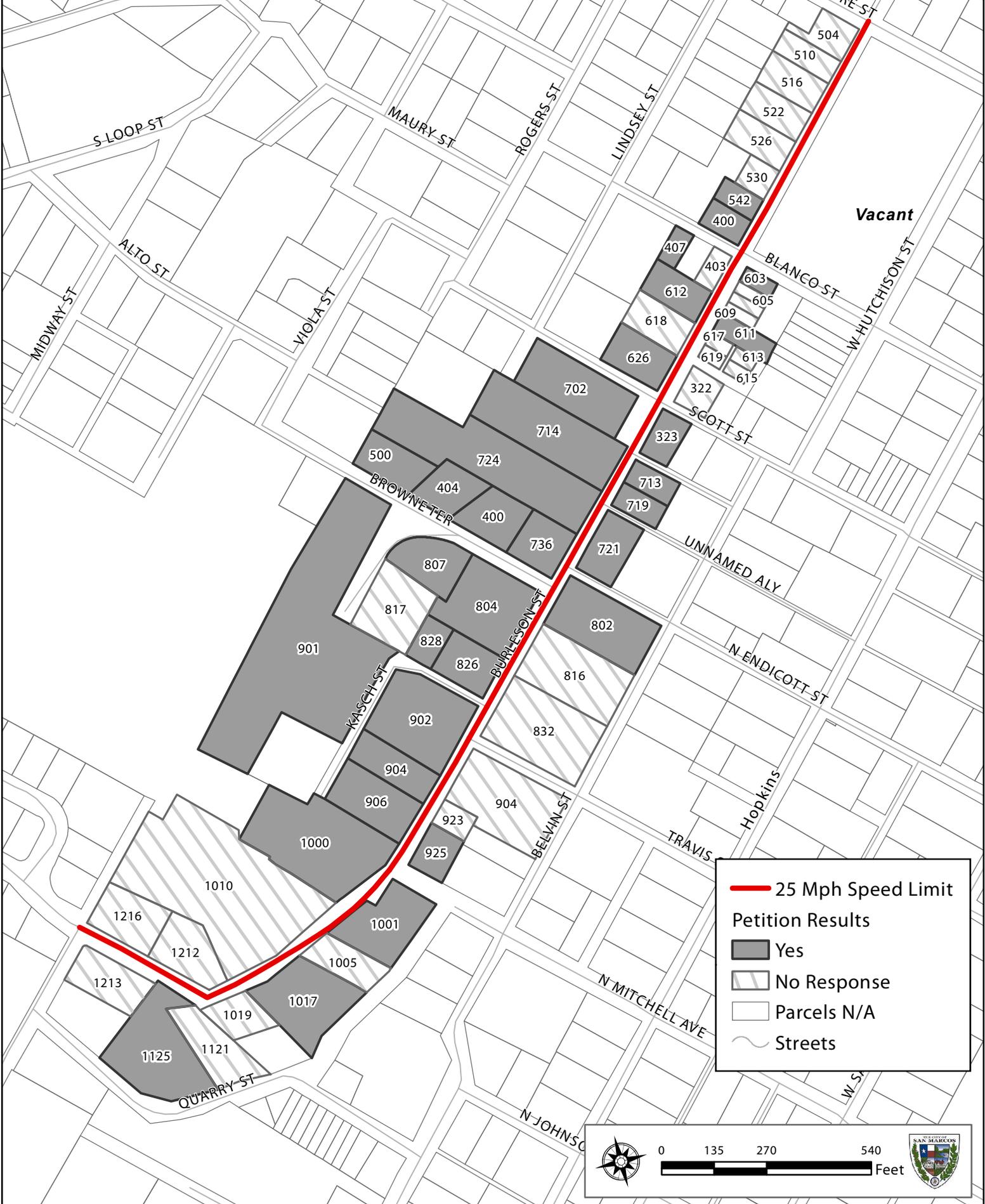
| NAME (print)            | COMPANY             | ADDRESS              | PHONE NUMBER        | APPROVE 25 MPH signs (check one)    |                          | SIGNATURE          |
|-------------------------|---------------------|----------------------|---------------------|-------------------------------------|--------------------------|--------------------|
|                         |                     |                      |                     | YES                                 | NO                       |                    |
| <i>Cory D. Washburn</i> |                     | <i>443 Blaine St</i> | <i>512-282-5011</i> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>[Signature]</i> |
| <i>Kathy M Morris</i>   | <i>Red's Movers</i> | <i>802 Belvin</i>    | <i>512-353-1586</i> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                    |
| <i>Kathy M Morris</i>   | <i>Red's Movers</i> | <i>713 Burleson</i>  | <i>512-353-1586</i> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                    |
|                         |                     |                      |                     | <input type="checkbox"/>            | <input type="checkbox"/> |                    |
|                         |                     |                      |                     | <input type="checkbox"/>            | <input type="checkbox"/> |                    |
|                         |                     |                      |                     | <input type="checkbox"/>            | <input type="checkbox"/> |                    |

Community Contact: DANNY BAGLEY Address: 736 BURLESON ST, SM 78666 Phone: 512.393.1262

Please Return to: Public Services Department - Transportation  
 630 E. San Marcos  
 TransportationInfo@sanmarcos.tx.gov

For questions, call 512-393-6036.

# Proposed 25 mph Speed Zone and Petition 500 to 1200 Block of Burlison St



September 25, 2020

**Contact:**

Kristy Stark, Director of Communications & IGR, 512.393.8105 [kstark@sanmarcostx.gov](mailto:kstark@sanmarcostx.gov)  
Rebecca Beahan, Communications Specialist, 512.393.8243 [rbeahan@sanmarcostx.gov](mailto:rbeahan@sanmarcostx.gov)

## Hopkins Street Project Amends Traffic Plan with Speed Reduction

In an effort to monitor and improve the flow of detoured traffic from the Hopkins Street Project, the City of San Marcos is amending the traffic plan and implementing temporary speed limit reductions from 30 mph to 25 mph on Belvin and San Antonio Streets beginning on Friday, Sept. 25.

The speed reduction is anticipated to be a permanent change after City staff submit the new speed limit to City Council for approval in December.

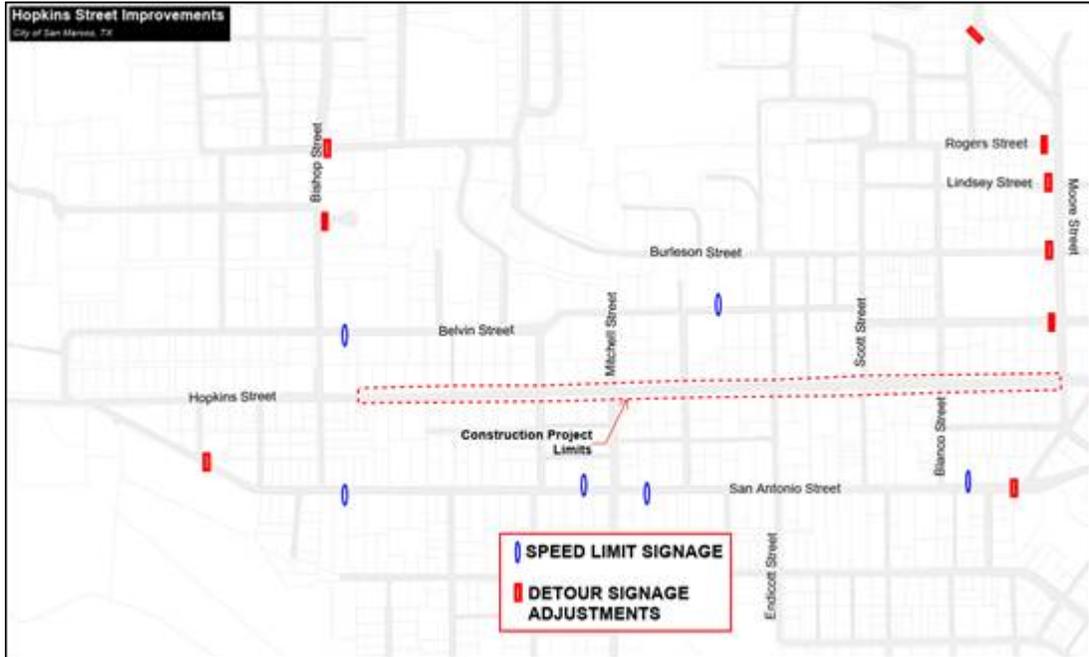
“The construction on Hopkins Street has resulted in an increase in thru traffic on San Antonio and Belvin Streets,” said Laurie Moyer, Director of Engineering and Capital Improvements. “We want the families living, biking, and walking on those streets to feel safe, and reducing the speed of traffic flow is an effective way to do that.”

Six new speed limit signs will be installed along the streets today to replace the previous speed limit signs.

City crews will also be replacing the current Road Closed to Thru Traffic signage along Bishop and Moore Street with Detour signage directing traffic to stay on the signed detour route. Sign locations will be adjusted to not impact access to local residents and businesses.

The \$10 Million Hopkins Street Project replaces water and wastewater lines on Hopkins from Bishop to Moore Street, includes traffic calming design with reduced roadway section and three raised intersections, and installs storm inlets tying into the Travis Drainage Outfall Project. The City of San Marcos broke ground on the project in Summer 2020 with completion scheduled by Summer 2022, weather permitting.

For more information, contact the City of San Marcos Engineering & Capital Improvements Department at 512.393.8130 or visit [www.sanmarcostx.gov/HopkinsStreetImprovements](http://www.sanmarcostx.gov/HopkinsStreetImprovements).



*Map of Signage Along San Antonio & Belvin Streets*

###



Legislation Text

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**File #:** Res. 2020-220R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-220R, approving an Interlocal Contract with the Edwards Aquifer Authority (“EAA”) and Texas State University for funding by the EAA of activities under the Edwards Aquifer Habitat Conservation Plan Program; authorizing the City manager, or his designee, to execute this contract on behalf of the City; and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** Engineering/CIP

**Amount & Source of Funding**

**Funds Required:** none

**Account Number:** Click or tap here to enter text.

**Funds Available:** Click or tap here to enter text.

**Account Name:** Click or tap here to enter text.

**Fiscal Note:**

**Prior Council Action:** none

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Sustainability

N/A

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

Economic Development - Choose an item.

Environment & Resource Protection - Natural Resources necessary for community's health, well-being, and prosperity secured for future development

Land Use - Choose an item.

Neighborhoods & Housing - Choose an item.

Parks, Public Spaces & Facilities - Choose an item.

- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

Narrative: The Edwards Aquifer Habitat Conservation Plan has been an ongoing program since January 2013. The partnership between three of its signatories, the Edwards Aquifer Authority (Program Manager), City of San Marcos and Texas State University have complied with an Interlocal Agreement (ILA) since that date. The current ILA terminates on December 31, 2020, so a new ILA is proposed to cover the period 2021 - 2028. This time period represents the final years of the current Incidental Take Permit.

**RESOLUTION NO. 2020- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN INTERLOCAL CONTRACT WITH THE EDWARDS AQUIFER AUTHORITY (“EAA”) AND TEXAS STATE UNIVERSITY FOR FUNDING BY THE EAA OF ACTIVITIES UNDER THE EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THIS CONTRACT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The attached Interlocal Contract with the Edwards Aquifer Authority and Texas State University is approved.

**PART 2.** The City Manager, or his designee, is authorized to execute the Interlocal Contract on behalf of the City.

**PART 3.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on October 20, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk



EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM  
INTERLOCAL CONTRACT NO. 20-025-TES  
BETWEEN THE  
EDWARDS AQUIFER AUTHORITY  
AND  
THE CITY OF SAN MARCOS AND TEXAS STATE UNIVERSITY  
FOR EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM FUNDING

**THIS INTERLOCAL CONTRACT** for program funding associated with the Edwards Aquifer Habitat Conservation Plan Program (Funding Contract) is made and entered into under the Interlocal Cooperation Act, Chapter 791, Texas Government Code, by and between the **EDWARDS AQUIFER AUTHORITY** (EAA), a conservation and reclamation district and political subdivision of the State of Texas, with its principal place of business located at 900 E. Quincy Street, San Antonio, Texas 78215, the **CITY OF SAN MARCOS** (City), a municipal corporation, with its principal place of business located at 630 East Hopkins, San Marcos, Texas 78666, and **TEXAS STATE UNIVERSITY** (Texas State), an institution of higher education and an agency of the State of Texas, with its principal place of business located at 601 University Dr., San Marcos, Texas 78666. The EAA, the City, and Texas State are each referred to hereinafter as a “Party,” and collectively as the “Parties.”

**AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the mutual promises and benefits contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE I  
DEFINITIONS**

As used in this Funding Contract, the following terms shall have the following meanings:

- A. “Annual Program Budget” means the budget for Program Expenditures adopted by the Board pursuant to the process described in Sections 4.4 through 4.7 of the FMA, subject to the limitations in Section 3.2 and Subsection 5.2.1 of the FMA.
- B. “Board” means the Board of Directors of the Edwards Aquifer Authority.
- C. “City and Texas State” means the City and/or Texas State, as appropriate.

D. “Conservation Measure” means a measure identified in Chapter 5 of the Edwards Aquifer Habitat Conservation Plan (EAHCP), as such measure may be modified pursuant to adaptive management, or a new measure developed and approved through adaptive management, to minimize or mitigate to the maximum extent practicable the impacts of the authorized taking of the Covered Species or contribute to the recovery of the Covered Species.

E. “Covered Species” means the species identified in Table 1-3 of the EAHCP, for which the EAHCP provides protection in a manner sufficient to meet all of the criteria for issuing an Incidental Take Permit (ITP).

F. “Edwards Aquifer Habitat Conservation Plan” (EAHCP or HCP) means the conservation plan prepared by the EAA, the City, and Texas State, among others, approved by the Board, required by Section 10(a)(2)(A) of the Endangered Species Act (ESA), and submitted to and approved by the Service as part of the application for an ITP and entitled Recon Environmental Inc. et al., *Edwards Aquifer Recovery Implementation Program Habitat Conservation Plan* (Nov. 2012).

G. “Funding and Management Agreement” (FMA) means the agreement effective January 1, 2012, as may be amended, to which the EAA, the City of New Braunfels, the City of San Marcos, the City of San Antonio, acting by and through its San Antonio Water System Board of Trustees, and Texas State University are parties, which provides for the funding and management of the EAHCP.

H. “HCP Program Account” means the restricted account, composed of a reserve fund and an operations fund, created by the EAA in accordance with Section 5.4 of the FMA to accumulate and disburse Program Aquifer Management Fees consistent with the Annual Program Budget for the implementation of the EAHCP and the ITP.

I. “Implementing Agreement” means the agreement, effective January 1, 2013, entered into by the EAA, the City of New Braunfels, the City of San Marcos, the City of San Antonio acting by and through its San Antonio Water System Board of Trustees, Texas State University, Texas Parks and Wildlife Department, and the Service to implement the EAHCP.

J. “Implementing Committee” means the committee established in accordance with Section 7.7 of the FMA to supervise the implementation of the EAHCP.

K. “Incidental Take Permit” (ITP) means Permit No. TE-63663A-1 issued by the Service to the EAA and others, pursuant to Section 10(a)(1)(B) (16 U.S.C. § 1539(a)(1)(B)) of the ESA.

L. “Program Activities” means activities described in the EAHCP and ITP, other than Conservation Measures, related to the implementation of the EAHCP and ITP.

M. “Program Documents” means the ITP, the Application for the ITP, the EAHCP, the Implementing Agreement, and the FMA.

N. “Program Funding” means funds provided by the EAA from the HCP Program Account to reimburse the City and Texas State for the costs associated with the implementation of the EAHCP and the ITP, consistent with the Annual Program Budget and the Program Funding Contracts provided for in Subsection 6.1.8 of the FMA.

O. “Program Funding Application” (Funding Application or Application) means the application submitted by the City and Texas State and approved by the EAA pursuant to Article 6 of the FMA for funding to implement the Conservation Measures and other Program Activities for which the City or Texas State has been designated responsibility in the EAHCP, and in effect for the calendar year for which it is submitted.

P. “Service” means the U.S. Fish and Wildlife Service of the U.S. Department of Interior.

Q. “Work Plan and Cost Estimate” (Work Plan) means the work plan and cost estimate prepared by the City and Texas State as provided in Sections 4.4 and 4.6 of the FMA to describe the activities and schedules that are reasonable and necessary for the City and Texas State to perform in order to implement the Conservation Measures and other Program Activities for which the City or Texas State have responsibility to undertake during the term of the current, approved Funding Application.

## ARTICLE II PURPOSE

In accordance with Subsection 6.1.8 of the FMA, the purpose of this Funding Contract is to provide for the funding of the current, approved Funding Application of the City and Texas State that is approved by the Board, referenced and incorporated herein for all purposes, and the requirements for the reimbursement of funds from the HCP Program Account as necessary for the implementation of the Conservation Measures or other Program Activities as described in the EAHCP as being the responsibility of the City or Texas State and as more specifically set out in the current, approved Application.

## ARTICLE III TERM

This Funding Contract shall commence and be effective on January 1, 2021 (Effective Date), and shall remain in effect through March 31, 2028, unless terminated sooner in accordance with Article X.

## ARTICLE IV ANNUAL PROGRAM FUNDING APPLICATIONS

A. For each year during the term of this Funding Contract, in accordance with Section 6.1 of the FMA, the City and Texas State will prepare a Funding Application and submit it to the EAA for formal approval by the Board through a resolution and order. It is the intention of the Parties that, each year, the current, approved Application will be considered to be attached to and

incorporated into this Funding Contract following formal approval of the Application by the Board.

B. The Funding Application shall be on a form prescribed by the EAA. The Application must include the information described in Subsection 6.1.1 of the FMA, including the total amount of requested Program Funding. Each Application shall also contain a line-item budgeted amount for each Task, including a separate budget for any associated Subtask.

C. Upon approval of the Funding Application as provided by Subsections 6.1.3 and 6.1.4 of the FMA, the EAA agrees to reimburse the City for implementation of each Task described in a current, approved Application in an amount not to exceed the Task’s individual, line-item budget. Funds may only be disbursed through the approval of individual monthly invoices in accordance with Article 6 of the FMA and this Funding Contract. Except as provided below, the EAA will not reimburse the City for any costs in excess of the total amount budgeted and approved for each Task and Subtask included in a current, approved Application.

ARTICLE V  
PERFORMANCE

A. The City and Texas State agree to devote their diligent and professional efforts and abilities to implement each Conservation Measure, shown here, and for which Program Funding has been approved in accordance with the current, approved Funding Application.

| EAHCP Conservation Measure No.  | Conservation Measure Title                     |
|---------------------------------|--|
| 5.3.1 & 5.4.1                   | Texas Wild-Rice Enhancement/Restoration        |
| 5.3.2 & 5.4.2                   | Management - Key Recreation Areas              |
| 5.3.3 & 5.4.3                   | Management - Floating Vegetation Mats & Litter |
| 5.3.5 & 5.3.9 & 5.4.11 & 5.4.13 | Non-Native Animal Species Control              |
| 5.3.7                           | Bank Stabilization/Permanent Access Points     |
| 5.3.8 & 5.4.3.1 & 5.4.12        | Non-Native Plant Species Control               |
| 5.7.1                           | Native Riparian Habitat Restoration            |
| 5.7.5                           | Household Hazardous Waste Management           |
| 5.7.6                           | Impervious Cover/Water Quality Protection      |

B. It shall be the City’s and Texas State’s responsibility to ensure that each Conservation Measure is completed in accordance with the schedules, budgets, descriptions, and specifications contained in the current, approved Funding Application.

C. The City and Texas State will provide, solely by and through their contractors, any and all personnel necessary for the implementation of the Conservation Measures included in the current, approved Funding Application. To the extent permitted by Texas law, the City and Texas State each hereby indemnifies and holds harmless the EAA and its officers, directors, employees, and agents from and against any claims brought by any contractor, subcontractor or other agent of Texas State relating in any way to the work performed under this Funding Contract.

Notwithstanding any provision of this Agreement, nothing herein shall be construed as a waiver by the City and Texas State of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflict with any other provision in this Contract, the terms of this paragraph shall control.

To the extent permitted by Texas law, EAA hereby indemnifies and holds harmless the City and Texas State and its officers, directors, employees, and agents from and against any claims brought by any third parties relating in any way to the work performed under this Funding Contract. When implementing the Conservation Measures included in the current, approved Funding Application, the City and Texas State may retain and utilize contractors or subcontractors as necessary to complete the implementation of the Conservation Measures included in the current, approved Funding Application. The EAA shall not have the right to terminate, limit, or alter, at any time, the participation of any contractor or subcontractor utilized by the City or Texas State. The City and Texas State will require their contractors or subcontractors to comply with all applicable laws.

D. The City and Texas State will implement the Conservation Measures described in the current, approved Funding Application in a good and workmanlike manner, strictly in accordance with the standards of the associated scopes of work and with the purpose and intent to achieve full compliance with the requirements of the current, approved Application, the EAHCP and the other Program Documents.

## ARTICLE VI INVOICING AND REIMBURSEMENTS

A. The City shall submit a monthly invoice packet to the EAA as a reimbursement request. Each invoice packet shall contain, at a minimum:

(1) a progress report, attached hereto in template form as provided in Exhibit B, containing:

- a description of the work completed during the billing cycle, by each contractor or subcontractor, as appropriate, within each Conservation Measure set out in Article IV.A.;
- a monthly update regarding compliance with the work schedule as it relates to achievement of the annual goals;
- an estimate of the percent completion year-to-date of each Conservation Measure, in accordance with the associated schedule in the current, approved Funding Application; and
- a discussion of any issues or problems that may result in an adjustment of the approved Conservation Measure budget or the total amount of Program Funding requested in the current, approved Application.

The City and Texas State have a separate interlocal contract dated December 29, 2016, that outlines reimbursement to Texas State from the City.

(2) documentation of all costs and expenses incurred during the billing cycle, including copies of all invoices from the City's and Texas State's contractors or subcontractors, including supporting documentation; and

(3) an invoice summary sheet, attached hereto in template form as Exhibit C, by an authorized representative (staff member) of the City and Texas State that such invoices have been approved for payment by the City and Texas State.

B. The monthly invoice packet will be submitted electronically in Adobe Acrobat (pdf) format via email to the HCP Coordinator and HCP Contract Administrator. All invoice packets from the City and Texas State to the EAA for the services for each previous month's activities shall be sent no later than the 30th day of each month.

C. Upon review and acceptance of the monthly invoice packet, the EAA agrees to reimburse the City and Texas State for all costs and expenses incurred for all work performed to implement the Conservation Measures set out in Article IV.A., as described in the proposals submitted in the current, approved Funding Application. However, in no event shall reimbursement to the City or Texas State exceed the amounts shown in the current, approved Application, unless amended in accordance with Article VI. The EAA will not be held accountable for any work performed or funds spent by the City or Texas State, which are not consistent with the current, approved Application.

D. The EAA will reimburse funds to the City and Texas State within 30 days of receipt and approval of a completed invoice packet.

E. The EAA will not reimburse for any expenditures of the City or Texas State for each previous year's activities that are not submitted to the EAA by the last business day of January of each year, except for projects that were included in the previous year's activities but for which the City or Texas State has not received an invoice, or retainage is being held pending completion of a project, in which case the City or Texas State must provide written notification to the EAA prior to the last business day of January, along with an estimate of these expenses and the anticipated date reimbursement will be requested.

## ARTICLE VII BUDGET AMENDMENTS

In the event actual expenditures for a Conservation Measure require adjustment of the approved budget amount in a current, approved Funding Application, the City or Texas State may request an amendment to the approved budget amount, and if necessary, the Annual Program Budget.

The Board may approve such a request if:

(1) the requested budget variance is documented in the submittal of an amended Funding Application, as provided in Subsections 6.1.7 and 6.2.3 of the FMA; and

(2) the amended Application is accompanied by a recommendation for approval by the Implementing Committee.

Upon receipt of a budget amendment request, EAA staff will place the item on the agenda of the next Implementing Committee. If the Implementing Committee approves the request, EAA staff will present the request for amendment to the Board, to the extent possible, within 45 days of receipt of the Implementing Committee recommendation. Such an amendment shall be approved at the sole discretion of the Board.

## ARTICLE VIII LIMITATIONS ON FUNDING

No costs or expenses of the City or Texas State may be reimbursed under this Funding Contract to:

A. fund the costs of any employee of the City or Texas State, except as may be authorized under Section 5.6.5.2 of the FMA;

B. fund any of the City's or Texas State's administrative costs, including, but not limited to overhead or any form of management, administration, research, planning, engineering, or legal services performed by an employee of the City or Texas State; or

C. fund the cost of measures required to be undertaken by the City or Texas State in order to obtain a Small Municipal Separate Storm Sewer System permit under the Texas Pollution Discharge Elimination System Program as required by the Texas Commission on Environmental Quality or the laws of the State of Texas (funds may be used for the cost of measures and activities included in such a permit to the extent that they implement Conservation Measures or other Program Activities in the current, approved Application, which exceed minimum requirements for obtaining the permit).

## ARTICLE IX NOTICES

A. All formal notices or communications which are required or permitted under this Funding Contract shall be in writing and shall be deemed properly delivered if sent by (a) U.S. Mail, return-receipt requested, (b) a nationally recognized overnight courier service, or (c) by facsimile, and if sent to the following addresses:

If to the EAA:

Attention: EAHCP Program Manager  
Threatened and Endangered Species  
Edwards Aquifer Authority  
900 E. Quincy Street  
San Antonio, TX 78215

If to the City of San Marcos:                   Attention: Habitat Conservation Plan Manager  
City of San Marcos  
630 East Hopkins  
San Marcos, TX 78666

If to Texas State University:                   Attention: Executive Director – The Meadows Center for  
Water and the Environment  
Texas State University  
601 University Drive  
San Marcos, TX 78666

If any of the contact information changes, the Party shall notify the other parties in writing within 30 days of the change.

B.       The Parties may designate in writing another person or persons for informal communication, including invoicing or administrative matters. Informal contacts may be designated through each Party’s representative on the Implementing Committee.

C.       Notices or other communications made under this section shall be deemed to have been received on the date of delivery if delivered personally or sent via facsimile or overnight service, or three (3) days after the date such notice is delivered, properly addressed, in the U.S. Mail, if mailed.

#### ARTICLE X TERMINATION

This Funding Contract may be terminated at any time by delivery of written notice of termination by any Party to the other Parties. The termination of this Funding Contract shall be effective 90 days after the date of the notice of termination unless the Parties jointly agree otherwise in writing. Upon receipt or issuance of such termination notice, the City and Texas State shall immediately stop all work in progress. Insofar as possible, all work in progress will be brought to a logical termination point on the date notice of termination was received, or on the date the termination is effective, whichever is later. Within 120 days after the date of the notice of termination, and as long as consistent with the current, approved Funding Application, the EAA shall pay the City and Texas State all moneys then due and owing for the rendered work to be performed hereunder, costs and expenses reasonably incurred up to the logical termination point. Upon receipt of a termination notice, the City and Texas State shall, within sixty (60) days, deliver or make copies available to the EAA, of all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the City and Texas State in the performance of this Funding Contract, whether completed or in process.

#### ARTICLE XI GENERAL

A.       Entire Funding Contract; Modification. This Funding Contract and the attached exhibits constitute the entire agreement between the Parties (other than the FMA and those related documents, including the Program Documents, specifically referred to herein including but not

limited to the current, approved Funding Application) relating to the rights granted and the obligations assumed herein. There are no representations, warranties, agreements or commitments between the Parties hereto except as set forth herein. Any oral representations, modifications, or amendments concerning this Funding Contract shall be of no force or effect. No representations, modifications, or amendments to this Funding Contract shall be binding on the Parties unless in writing, properly approved, and signed by both Parties. This Funding Contract may be amended only by written agreement of all of the Parties. No change, amendment, or modification of this Funding Contract will be made or will be effective that will cause this Funding Contract to diverge from or create an inconsistency with any Program Document.

B. Counterparts. This Funding Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

C. Succession and Assignment. The provisions of this Funding Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, no Party may assign any of its rights or delegate any of its duties hereunder without written consent from the other Parties.

D. Applicable Law; Venue. This Funding Contract is deemed to have been made in and to be performable in the State of Texas, and shall be construed in accordance with and governed by the laws of the State of Texas. It is specifically agreed among the Parties that in the event that any legal proceeding is brought to enforce this Funding Contract or any provision hereof, the same will be brought in Hays County, Texas.

E. Headings. The heading and captions of the various sections of this Funding Contract are for convenience and descriptive purposes only and shall not be used to interpret or construe its provisions, nor alter or affect the terms and conditions of this Funding Contract.

F. Interpretation. This Funding Contract or any portion thereof shall not be interpreted by a court of law to the detriment of a Party based solely upon that Party's authorship of the Funding Contract or any portion thereof.

G. Legal Authority; Approval by the Parties. The Parties each affirm and certify that they have the legal authority to enter into this Funding Contract, and that their execution of this Funding Contract has been duly authorized by action of their governing bodies as required by Section 791.011(d)(1), Texas Government Code; and that each Party has taken all necessary official action to approve this Funding Contract. Each Party to this Funding Contract represents to the others that it is empowered by law to execute this Funding Contract and other agreements and documents and to give such approvals, in writing or otherwise, as are or may hereafter be required to accomplish the same.

H. Severability. The invalidity of any provision or provisions of this Funding Contract shall not affect any other provision of this Funding Contract, which shall remain in full force and effect, nor shall the invalidity of a portion of any provision of this Funding Contract affect the balance of such provision.

I. Waiver. Notwithstanding anything to the contrary contained in this Funding Contract, any right or remedy or any default under this Funding Contract, except the right of a Party to receive the payments from another Party, which will never be determined to be waived, will be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within four (4) years after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by any Party hereto or of the performance by any other Party of any duty or obligation hereunder will be deemed a waiver thereof in the future, nor will any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances. Termination of this Funding Contract for breach shall not constitute a waiver of any rights or remedies available at law or in equity to a Party to redress such breach. All remedies, either under this Funding Contract or at law or in equity or otherwise available to a Party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination. In addition, to these provisions, applicable provisions of this Funding Contract shall survive any termination of this Funding Contract.

J. Exhibits. The Exhibits, schedules and/or other documents attached hereto or referred to herein, are incorporated herein and made a part of this Funding Contract for all purposes. As used herein, the expression "Funding Contract" means the body of this Contract and such attachments, Exhibits, schedules and/or other documents, and the expressions "herein," "hereof," and "hereunder" and other words of similar import refer to this Funding Contract and such attachments, exhibits, schedules and/or other documents as a whole and not to any particular part or subdivision thereof.

K. No Third-Party Beneficiary; No Partnership. This Funding Contract is not intended to confer any rights, privileges or causes of action upon any third party other than the Parties to this Funding Contract. The Parties understand and agree that this Funding Contract does not create a fiduciary relationship between them, they are separate entities, the City and Texas State are independent contractors with respect to the Conservation Measures or other Program Activities to be implemented hereunder and are not subject to the direct or continuous control and supervision of the EAA. Nothing in this Funding Contract is intended or will be construed to convert any Party into a subsidiary, joint venturer, partner, employee, servant, representative, or other agent of another Party for any purpose whatsoever. Nor will any Party have the authority to bind another in any respect. Each Party will remain an independent contractor responsible for its own actions except as otherwise specifically provided herein. The EAA shall have no right of direction or control of the City or Texas State, or their respective employees, agents, contractors, or subcontractors except as to the results to be obtained, and in a general right to order the implementation of the Conservation Measures or other Program Activities to start or stop as agreed to herein, to inspect the progress of the implementation of the Conservation Measures or other Program Activities to be performed, and to receive reports. The City and Texas State shall accommodate reasonable requests from the EAA to allow EAA employees, agents or representatives to accompany and observe the implementation of the Conservation Measures or other Program Activities as described in each current, approved Funding Application.

L. Payment from Current Revenues. Pursuant to Section 271.903(a), Texas Local Government Code, this Funding Contract is conditioned upon, and the EAA agrees to use its best

efforts to obtain and appropriate funds for the payment of all obligations due under the terms of this Funding Contract. The City and Texas State acknowledge and agree that all payments and other obligations due under the terms of this Funding Contract shall be deemed to be the commitment of the EAA's current revenues only. Moreover, the City and Texas State acknowledge that pursuant to Section 791.011(d)(3), Texas Government Code, the EAA must make any payments under this Funding Contract only from current revenues available to the EAA. The City and Texas State will not have the right to demand payment by the EAA from any funds raised or to be raised by taxation (other than revenues from a regional sales tax as an alternative funding source under Subsection 6.4.1 of the FMA), and the EAA's obligation under this Funding Contract will never be construed to be a debt of the EAA of such kind as to require it under the Constitution and laws of the State to levy and collect an ad valorem tax to discharge such obligation. Moreover, the City and Texas State agree and understand that the cost of implementation of the Conservation Measures or other Program Activities by the City and Texas State under this Funding Contract and the current, approved Funding Application will be paid solely from Program Aquifer Management Fees, or funding contributions from third parties, disbursed from the HCP Program Account of the EAA as provided by Sections 5.1, 5.3, 5.4 and 5.6 of the FMA, and that the EAA will not be obligated to provide funding beyond the sources and limitations identified in the current, approved Application.

M. Informal Negotiations; Mediation. In the event any controversy arising under this Funding Contract is not resolved by informal negotiations between the Parties within 30 days after any Party requests negotiations, then, upon the request of any Party, the controversy will be referred, to the extent applicable, to the dispute resolution process provided for in Chapter 2260 of the Texas Government Code. If it is determined that the Chapter 2260 of the Texas Government Code is not applicable, the parties agree to utilize the process provided in the Texas Civil Practice and Remedies Code, Chapter 154, to the extent applicable, as may be amended, or its successor statute. The mediation process will continue until the controversy is resolved, the mediator makes a finding that there is no possibility of settlement through mediation, or either Party chooses not to continue further. All costs and expenses of the mediation (including the mediator's fees) will be shared equally by the Parties involved in the mediation, provided however, that costs incurred by each Party will be costs solely of such Party.

N. Force Majeure. If by reason of Force Majeure any Party hereto will be rendered unable wholly or in part to carry out its obligations under this Funding Contract, then if such Party gives notice and the full particulars of such Force Majeure in writing to the other Parties within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as its performance is prevented by such Force Majeure, will be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party will endeavor to remove or overcome such inability with reasonable dispatch. The term "Force Majeure" as employed herein means acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, regulatory restrictions imposed on the EAA by the Texas Legislature, any civil or military authority, insurrection, riots, epidemics and pandemics, landslides, lightning, earthquake, fires, hurricanes, tornadoes, blue northers, storms, floods, washouts, any drought defined as an Unforeseen Circumstance in Section 8.2 of the EAHCP, restraint of government and people, civil disturbances, explosions, extraordinary breakage or accidents to machinery, pipelines or canals,

partial or entire failure of water supply, or on account of any other causes to the extent not reasonably within the control of the Party claiming such inability. The Parties acknowledge that nothing in this provision affects the authority of the Service to suspend or revoke the Permit, either partially or in its entirety, as to the Party experiencing the inability or as to all Parties.

O. Remedies. The Parties recognize that failure in the performance of any Party's obligations hereunder may not be measurable solely in money damages. Each Party therefore agrees in the event of any default on its part that each Party will have available to it, in addition to all other legal remedies, the equitable remedy of mandamus and/or specific performance, but not termination as long as the ITP is outstanding. It is the intent of the Parties to this Funding Contract that any default may be subject to the remedy of mandamus and/or specific performance to the extent that mandamus and/or specific performance is possible under the existing circumstances. If the EAA fails to appropriate funds necessary to discharge that Party's obligations under this Funding Contract and a court of competent jurisdiction fails to enforce that obligation, then this Funding Contract will terminate, and the other Parties will have the right to petition the Service to terminate the ITP with regard to the EAA.

P. Default – Notice and Opportunity to Cure. If any Party fails to perform any obligation or make any payment in the required amount when due under this Funding Contract, the other Parties may, without prejudice to any other right or remedy it may have under this Funding Contract, provide written notice of default to the nonperforming Party. If written notice of default is provided to a nonperforming Party, a copy of said notice will also be provided to the Implementing Committee. The nonperforming Party has 60 days from receipt of the notice within which to remedy the default.

Q. Rights Regarding Books and Records. Each Party will permit the other Parties, upon reasonable notice, to examine and copy all the books and records kept by the Party regarding this Funding Contract. In addition, upon reasonable prior written notice to the other Party, any Party may conduct a complete audit of the books and records kept by the Party regarding this Funding Contract and any approved Funding Application as well as upon the information and documentation used to prepare the books and records. Any such audit will be at the requesting Party's sole expense and will be prepared by a certified public accounting firm. If the audit report discloses actual errors in the books and records such that the charges assessed to the other Party are in error, then such error will be corrected for the period up to four years from the date the erroneous charge was paid and all payments reconciled over the subsequent twelve-month period beginning with the audited Party's fiscal year.

R. Assumption of the Risk; Indemnification. To the extent permitted by Texas law, the City and Texas State each hereby indemnifies and holds harmless the EAA and its officers, directors, employees, and agents from and against any third-party claims relating in any way to the work performed under this Contract.

Notwithstanding any provision of this Contract, nothing herein shall be construed as a waiver by the City or Texas State of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflict with any other provision in this Contract, the terms of this paragraph shall control.

S. Goods and Services. The Parties agree that the mutual commitments stated in this Funding Contract to provide operational, regulatory and implementation services in execution of the EAHCP constitute an agreement by each Party for providing goods and services to the other Party, that payments due from the EAA and the mutual provision of goods and services are amounts due and owing under this Funding Contract, and that this Funding Contract. This Funding Contract is subject to Chapter 271, Subchapter I, Texas Local Government Code, as it relates to the City but does not apply to Texas State.

T. Ownership and Disclosure of Materials.

(1) All information, documents, property and materials produced, created or supplied under this Funding Contract, whether by the EAA, the City or Texas State, their employees, agents, contractors, or subcontractors or anyone else, and whether finished or unfinished or in draft or final form, will be the property of the City and Texas State. Said materials shall be provided to the EAA upon request for archival purposes, for the development of the EAHCP administrative record, and to reflect the City and Texas State work performed, including after expiration or termination of the Funding Contract. The EAA shall have unlimited rights to technical and other data resulting directly from the performance of the Conservation Measures associated with the any approved Funding Application and this Funding Contract. The City and Texas State will also cooperate fully with the EAA by sharing information and documentation in the development of the EAHCP annual report as more specifically set forth below.

(2) The information, documents, property and materials produced, created or supplied under this Funding Contract, including preliminary technical reports and studies, may be disclosed to any third-party pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code. The City and Texas State shall immediately advise the EAA of any requests for any document by a third party made pursuant to the Texas Public Information Act.

U. Additional Cooperation and Obligations. The City and Texas State agree to timely prepare and submit their monitoring report under Subsection 7.5.3 of the FMA for all of the Conservation Measures and Program Activities undertaken and funded pursuant to this Funding Contract. Moreover, the City and Texas State agree to fully cooperate and assist the EAA in the preparation, development, and submission to the Service of an annual report (as set forth in Section 11.1.c. of the Implementing Agreement), which includes a description of all of the Parties' HCP activities and an analysis of whether the terms of the HCP have been met in that annual reporting period. The City and Texas State will make available to the EAA their administrative records and such other documents and data as the EAA may request in furtherance of the preparation of such annual report.

V. In accordance with Texas Education Code, Section 51.9335(h), any Contract for the acquisition of goods and services to which an institution of higher education is a party, any provision required by applicable law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:

- (1) whether the provision appears on the face of the Agreement or Contract; or
- (2) whether the Agreement or Contract includes any provision to the contrary.

W. Nondiscrimination. In their execution of this Funding Contract, the Parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. The Parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this Funding Contract.

**IN WITNESS WHEREOF**, the Parties have executed this Interlocal Cooperation Contract in duplicate counterparts, both having equal force and effect, as of the Effective Date stated in Article III.

FOR CITY OF SAN MARCOS

By: \_\_\_\_\_  
Bert Lumbreras Date  
City Manager

ATTEST:

By: \_\_\_\_\_  
Tammy Cook Date  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael J. Cosentino Date  
City Attorney

**THE TEXAS STATE UNIVERSITY SYSTEM**

\_\_\_\_\_  
Denise M. Trauth  
President

\_\_\_\_\_  
Date

Reviewed and Recommended:

\_\_\_\_\_  
Daniel Harper  
Vice Chancellor and Chief Financial Officer

\_\_\_\_\_  
Date

Approved as to Legal Form:

\_\_\_\_\_  
Nelly Herrera  
Vice Chancellor and General Counsel

\_\_\_\_\_  
Date

ATTEST:

APPROVED by the Board of Regents of The Texas State University System on \_\_\_\_\_, at \_\_\_\_\_, Texas.

\_\_\_\_\_  
Brian McCall, PhD, Chancellor  
Secretary to the Board

\_\_\_\_\_  
Date

FOR THE EDWARDS AQUIFER AUTHORITY

By: \_\_\_\_\_  
Roland Ruiz Date  
General Manager

ATTEST:

By: \_\_\_\_\_  
Jennifer Wong-Esparza Date  
Assistant to the Board Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Darcy Alan Frownfelter Date  
General Counsel

EXHIBIT A  
TABLE 1 – CURRENT, APPROVED FUNDING APPLICATION

| EAHCP Mitigation No.            | Description                                    | Final Amount Requested | Selected Contractor |
|---------------------------------|--|------------------------|---------------------|
| 5.3.1 & 5.4.1                   | Texas Wild-Rice Enhancement/Restoration        |                        |                     |
| 5.3.2 & 5.4.2                   | Management - Key Recreation Areas              |                        |                     |
| 5.3.3 & 5.4.3                   | Management - Floating Vegetation Mats & Litter |                        |                     |
| 5.3.5 & 5.3.9 & 5.4.11 & 5.4.13 | Non-Native Animal Species Control              |                        |                     |
| 5.3.7                           | Bank Stabilization/Permanent Access Points     |                        |                     |
| 5.3.8 & 5.4.3.1 & 5.4.12        | Non-Native Plant Species Control               |                        |                     |
| 5.7.1                           | Native Riparian Habitat Restoration            |                        |                     |
| 5.7.5                           | Household Hazardous Waste Management           |                        |                     |
| 5.7.6                           | Impervious Cover/Water Quality Protection      |                        |                     |
|                                 | <b>Funding Request Total</b>                   |                        |                     |

**EXHIBIT B  
PROGRESS REPORT TEMPLATE**

Date:

HCP Measure(s) Addressed:

Project Name:

Invoice Number:

Invoice Period: mm/dd/yyyy to mm/dd/yyyy

**1. Services Performed During the Invoice Period**

Describe the activities that were performed for each Conservation Measure during the invoice period.

**2. Schedule Issues**

Describe the status of the project progress, identifying which activities, if any, are behind schedule.

**3. Budget Issues**

EXHIBIT C  
INVOICE SUMMARY SHEET TEMPLATE

Invoice Date: \_\_\_\_\_

| City of San Marcos/Texas State University |              |  |                          |                 |          |            |                           |                   |                       |
|---|--------------|--|--------------------------|-----------------|----------|------------|---------------------------|-------------------|-----------------------|
| EAA PO#                                   | EAA Invoice# | Conservation Measure                                 | HCP Measure(s) Addressed | Contractor Name | COSM PO# | Contract # | Beginning Contract Amount | Budget Adjustment | Total Contract Amount |
|   |              | Native Riparian Habitat Restoration                  | 5.2.1                    |                 |          |            |                           |                   | 0.00                  |
|   |              | Management of Recreation in Key Areas                | 5.2.10                   |                 |          |            |                           |                   | 0.00                  |
|   |              | Control of Non Native Predator Species               | 5.2.11                   |                 |          |            |                           |                   | 0.00                  |
|   |              | Control of Non Native Plant Species                  | 5.2.2.1/5.2.2.3          |                 |          |            |                           |                   | 0.00                  |
|   |              | Permanent Access Points/Bank Stabilization           | 5.2.2.2/5.2.2.3          |                 |          |            |                           |                   | 0.00                  |
|   |              | Impervious Cover/Water Quality Protection            | 5.2.4                    |                 |          |            |                           |                   | 0.00                  |
|   |              | Management of Household Hazardous Wastes             | 5.2.5/5.2.9              |                 |          |            |                           |                   | 0.00                  |
|   |              | Texas wild-rice Enhancement                          | 5.2.6/6.3.6              |                 |          |            |                           |                   | 0.00                  |
|   |              | Management of Floating Aquatic Vegetation and Litter | 5.2.7                    |                 |          |            |                           |                   | 0.00                  |
| Totals:                                   |              |  |                          |                 |          |            |                           |                   | 0.00                  |

Affidavit:

I hereby certify and attest the above information to be true and correct to the best of my knowledge. I further certify that all work or materials covered by this Invoice for Payment has been completed or materials delivered in accordance with the Contract Documents and, that all amounts have been paid to the Contractor or Supplier and that the current payment shown herein is now due.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



Legislation Text

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**File #:** Res. 2020-221R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-221R, authorizing a Change in Service to the agreements with the real estate appraisal firms previously selected to be on an on-call list to provide appraisal services for various City projects to increase each firm's contract amount from \$50,000.00 to \$100,000.00; authorizing the City Manager or his designee to execute the necessary documents to implement the Change in Service; and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** Engineering/CIP, Laurie Moyer, Director (by Lynda Williams, Purchasing Manager)

**Amount & Source of Funding**

**Funds Required:** \$250,000.00

**Account Number:** Determined as services are used

**Funds Available:** N/A

**Account Name:** N/A

**Fiscal Note:**

**Prior Council Action:** Res. 2019-04R, January 15, 2019 approval of On-Call Appraisal Contracts.

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

N/A

N/A

N/A

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.

Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Stormwater Master Plan

**Background Information:**

The appraisal service on-call contracts were approved by City Council on January 15, 2019 for a total not to exceed amount of \$250,000; \$50,000 each.

This request is to increase the authorized contract amounts by \$50,000 for the on-call appraisal services contracts awarded in 2019:

- Allegiant Group, PLLC            Increase to \$100,000
- Atrium Real Estate Services    Increase to \$100,000
- BBG, Inc.                            Increase to \$100,000
- Eckman Groll, Inc.                Increase to \$100,000
- The Aegis Group, Inc.            Increase to \$100,000

Appraisal services are used to determine the accurate valuation of land and ownership and coordinating client contracting requirements, reporting needs, time schedules, project fees, information needed for assignment completion, and product delivery. Because of the significant number of projects underway in existing neighborhoods, these five (5) contracts have been used much more extensively than originally anticipated. This action will increase the contracts to a total not to exceed amount of \$500,000.

Generally, staff will rotate between the service providers based on their prior utilization. Payment for the work comes from the project requesting the service.

These firms were selected from a Request for Qualifications solicitation in late 2018.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends approval of the motion to increase the Appraisal Service contracts

**RESOLUTION NO. 2020-XXR**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AUTHORIZING A CHANGE IN SERVICE TO THE AGREEMENTS WITH THE REAL ESTATE APPRAISAL FIRMS PREVIOUSLY SELECTED TO BE ON AN ON-CALL LIST TO PROVIDE APPRAISAL SERVICES FOR VARIOUS CITY PROJECTS TO INCREASE EACH FIRM'S CONTRACT AMOUNT FROM \$50,000.00 TO \$100,000.00; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE NECESSARY DOCUMENTS TO IMPLEMENT THE CHANGE IN SERVICE; AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** A Change in Service to the Agreements with the following firms previously selected to be on an on-call list of firms qualified to provide real estate appraisal services for various City projects will be executed to increase the contract amount from \$50,000.00 to \$100,000.00:

- A.** Allegiant Group, PLLC;
- B.** Atrium Real Estate Services;
- C.** BBG, Inc.;
- D.** Eckman Groll, Inc.; and
- E.** The Aegis Group, Inc.

**PART 2.** This resolution will be in full force and effect immediately from and after its passage.

**ADOPTED** on October 20, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk



## Legislation Text

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**File #:** Res. 2020-222R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-222R, approving a Real Estate Sales Contract with Randy N. and Patrice A. Greer for the City to purchase lots 2 and 3, block 12 of the original town of San Marcos, located at 128 and 140 South Guadalupe Street, for a price of \$1,600,000, plus any associated closing costs, approving amendments to said contract including an amendment providing for the withholding of funds in an amount up to \$225,000 for expenses associated with enrolling in the Texas Commission on Environmental Quality (“TCEQ”) voluntary cleanup program; approving a Voluntary Cleanup Program Agreement with the TCEQ in connection with the purchase of the property; approving the execution of said Real Estate Sales Contract by the City Manager, or his designee, on behalf of the city; authorizing the City Manager, or his designee, to execute the contract amendment regarding the withholding of funds under the TCEQ voluntary cleanup program, any related closing documents and the TCEQ Voluntary cleanup program agreement on behalf of the City; and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** Engineering/CIP

**Amount & Source of Funding**

**Funds Required:** \$1,600,000

**Account Number:** [Click or tap here to enter text.](#)

**Funds Available:** [Click or tap here to enter text.](#)

**Account Name:** TIRZ #5; C614 - Downtown Acquisition

**Fiscal Note:**

**Prior Council Action:** Ordinance 2020-046

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Downtown Vitality

[Choose an item.](#)

[Choose an item.](#)

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

Economic Development - [Choose an item.](#)

Environment & Resource Protection - [Choose an item.](#)

- Land Use - Direct Growth, Compatible with Surrounding Uses
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Downtown Master Plan

**Background Information:**

In June, the City Council approved an amendment to the Downtown Tax Increment Reinvestment Zone #5 Project and Financing Plan. The amendment included funding for the acquisition of property for parking and other public priorities. This resolution authorizes the City Manager to close on Lots 2 & 3, Block 12 of the Original Town of San Marcos located at 128 and 140 S. Guadalupe Street.

This property was submitted for enrollment with Texas Commission on Environmental Quality (TCEQ) in the Voluntary Cleanup Program (VCP.) TCEQ has accepted the enrollment and the resolution also approves the application into the program. The anticipated costs associated with the VCP program will be escrowed out of the purchase price and held until clearance of the site is obtained from TCEQ.

Additional information regarding the properties:

- The final use of the property has not been determined. As per the TIRZ and agenda form the properties are identified for parking or other public priorities.
- As part of the due diligence in purchasing the properties, monitoring wells were installed for soil and groundwater analysis purposes.
- No soil contamination was found but tetrachloroethane (PERC) and trichloroethane (PCE) were found above Protective Contamination Levels (PCLs) in one well. These chemicals are typically associated with dry cleaning operations.
- Based upon analysis the source of the contamination is 128 & 140 S. Guadalupe.
- The current property owner & the City have been accepted into the Texas Commission on Environmental Quality's the Voluntary Cleanup Program. An amount above the anticipated cleanup costs is being withheld from the purchase payment to fund the effort.
- Because there is no clean-up responsibilities associated with 152 S. Guadalupe, no funding is being withheld.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Click or tap here to enter text.

**RESOLUTION NO. 2020-222R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A REAL ESTATE SALES CONTRACT WITH RANDY N. AND PATRICE A. GREER FOR THE CITY TO PURCHASE LOTS 2 AND 3, BLOCK 12 OF THE ORIGINAL TOWN OF SAN MARCOS, LOCATED AT 128 AND 140 SOUTH GUADALUPE STREET, FOR A PRICE OF \$1,600,000.00, PLUS ANY ASSOCIATED CLOSING COSTS; APPROVING AMENDMENTS TO SAID CONTRACT INCLUDING AN AMENDMENT PROVIDING FOR THE WITHHOLDING OF FUNDS IN AN AMOUNT UP TO \$225,000.00 FOR EXPENSES ASSOCIATED WITH ENROLLING IN THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”) VOLUNTARY CLEANUP PROGRAM; APPROVING A VOLUNTARY CLEANUP PROGRAM AGREEMENT WITH THE TCEQ IN CONNECTION WITH THE PURCHASE OF THE PROPERTY; APPROVING THE EXECUTION OF SAID REAL ESTATE SALES CONTRACT AND AMENDMENTS THERETO BY THE CITY MANAGER, OR HIS DESIGNEE, ON BEHALF OF THE CITY; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT AMENDMENT REGARDING THE WITHHOLDING OF FUNDS UNDER THE TCEQ VOLUNTARY CLEANUP PROGRAM, ANY RELATED CLOSING DOCUMENTS AND THE TCEQ VOLUNTARY CLEANUP PROGRAM AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The attached Real Estate Sales Contract, as amended (the “Sales Contract”), amendment to the Sales Contract providing for the withholding of funds up to \$225,000.00 (the “Withholding Amendment”) and the Texas Commission on Environmental Quality Voluntary Cleanup Program Agreement (the “TCEQ Agreement”) are approved. The approval of the Sales Contract, however, is subject to the execution by the Sellers of the Withholding Amendment.

**PART 2.** The execution of the Sales Contract by the City Manager, or his designee, is approved.

**PART 3.** The City Manager, or his designee, is authorized to execute all closing documents associated with the Sales Contract, and to execute the Withholding Amendment and the TCEQ Agreement in substantially the forms attached on behalf of the City.

**PART 4.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on October 20, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

029165Smt

## Real Estate Sales Contract

This contract to buy and sell real property is between Seller and Buyer as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer as parties to this contract and by Title Company to acknowledge receipt of the Earnest Money. Buyer must deliver the Earnest Money to Title Company and obtain Title Company's signature before the Earnest Money Deadline provided in section A.1. for this contract to be effective.

**Seller:** Randy N. and Patrice A. Greer

Address: 118 Timber Ridge Drive, San Marcos, TX 78666

Phone: 512.757.1005

E-mail:

**Buyer:** City of San Marcos

Address: 630 East Hopkins Street, San Marcos, TX 78666

Phone: 512.393.8137

E-mail: psteed@sanmarcostx.gov

Type of entity: Municipal corporation

**Property:** Lots 2 and 3, Block 12, Original Town of San Marcos, commonly known as 140 and 128 South Guadalupe Street, San Marcos, Texas 78666, respectively, as shown in Exhibit A, together with improvements to the Land ("Improvements") and any leases associated with the Land and Improvements ("Leases").

**Title Company:** San Marcos Title Company

Address: 100 East San Antonio Street, San Marcos, TX 78666

Phone: 512.353.1782

E-mail: sdavid@smtitle.com

**Purchase Price:** \$1,600,000

**Earnest Money:** \$15,000

**Surveyor:** Byrn & Associates, Inc., San Marcos, Texas

**Survey Category:** 1A

**Buyer's Liquidated Damages:** \$1,000.00

**Seller's Additional Liquidated Damages:** \$1,000.00

**County for Performance:** Hays County, Texas

**A. Deadlines and Other Dates**

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Earnest Money Deadline: Seven days after execution of this contract by both parties.
2. Delivery of Title Commitment: 10 days after the Effective Date
3. Delivery of Survey: 30 days after the Effective Date
4. Delivery of UCC Search: N/A
5. Delivery of legible copies of instruments referenced in the Title Commitment: 21 days after the Effective Date
6. Delivery of Title Objections: 7 days after delivery of the Title Commitment and Survey and legible copies of the instruments referenced in them
7. Delivery of Seller's Records as specified in Exhibit C: 5 days after the Effective Date
8. End of Inspection Period: 120 days after the Effective Date or such earlier date elected by Buyer by written notice to Seller
9. Closing Date: Within 30 days after the end of the Inspection Period.

**B. Closing Documents**

1. At closing, Seller will deliver the following items:
  - Special Warranty Deed
  - IRS Nonforeign Person Affidavit
  - Evidence of Seller's authority to close this transaction

Customary closing items as may be requested by the Title Company

2. At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction

Customary closing items as may be requested by the Title Company

The documents listed in this section B are collectively known as the "Closing Documents." Unless otherwise agreed by the parties before closing, the deed will be prepared by Seller's attorney using the forms contained in the current edition of the *Texas Real Estate Forms Manual* (State Bar of Texas). The deed from Seller, however, shall not include any provisions regarding payment of taxes contrary to the provisions in Section K.2.c.

### **C. Exhibits**

The following are attached to and are a part of this contract:

Exhibit A— Description of the Property

Exhibit B— Representations; Environmental Matters

Exhibit C— Seller's Records

### **D. Purchase and Sale of Property**

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract.

### **E. Interest on Earnest Money**

Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money.

### **F. Title and Survey**

1. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Property. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment

delivered to and approved by Buyer.

2. *Survey.* "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to Buyer, and any other person specified by Buyer to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

3. *Delivery of Title Commitment, Survey, and Legible Copies.* Seller must deliver the Title Commitment to Buyer by the deadline stated in paragraph A.2.; the Survey by the deadline stated in paragraph A.3.; and legible copies of the instruments referenced in the Title Commitment and Survey by the deadline stated in paragraph A.5. Seller will deliver an existing survey to Buyer. If such survey is not acceptable to Title Company, Buyer may, at Buyer's cost update or obtain a new survey.

4. *Title Objections.* Buyer has until the deadline stated in section A.6. ("Title Objection Deadline") to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has five days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

#### **G. Inspection Period**

1. *Review of Seller's Records.* Seller will deliver to Buyer copies of Seller's Records specified in Exhibit C, or otherwise make those records available for Buyer's review, if in Seller's possession, by the deadline stated in section A.7.

2. *Entry onto the Property.* Buyer may enter the Property before closing to inspect it, subject to the following:

- a. Buyer may not interfere in any material manner with existing operations or occupants of the Property;

- b. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;
- c. if the Property is altered because of Buyer's inspections, Buyer must, to the extent reasonably practicable, return the Property to its preinspection condition promptly after the alteration occurs;
- d. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within 15 days after their preparation or receipt; and
- e. Buyer must abide by any other reasonable entry rules imposed by Seller.

3. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period. If Buyer does not notify Seller of Buyer's termination of the contract before the end of the Inspection Period, Buyer waives the right to terminate this contract pursuant to this provision.

#### **H. Representations**

Subject to representations stated in Exhibit B of this Agreement, which are true as of the effective date, Buyer acknowledges that Buyer has made thorough inspections and investigations of the Property and Buyer agrees to take title to the Property "AS-IS, WHERE IS, AND WITH ALL FAULTS" and in the condition existing as of the date of this Agreement, subject to reasonable use, ordinary wear and tear, and without any reduction in or abatement of the Purchase Price. Buyer has undertaken all such investigations of the Property as Buyer deems necessary or appropriate under the circumstances as to the status of the Property and the existence or non-existence of curative action to be taken with respect to any hazardous or toxic substances on or discharged from the property, and based upon same. Buyer is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers.

#### **I. Condition of the Property until Closing; Cooperation; No Recording of Contract**

1. *Maintenance and Operation.* Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property. Until the end of the Inspection Period, Seller will not enter into, amend, or terminate any contract that affects the Property other than in the ordinary course of operating the Property and will promptly give notice to Buyer of each new, amended, or terminated contract, including a copy of the contract, in sufficient time so that Buyer may consider the new information before the end of the Inspection Period. If Seller's notice is given within three days before the end of the Inspection Period, the Inspection Period will be extended for three days. After the end of the Inspection Period, Buyer may terminate this contract if Seller enters into, amends, or terminates any contract that affects the Property without first obtaining Buyer's written consent.

2. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within fifteen days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen days before closing).

3. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing).

4. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

5. *Cooperation.* Seller will cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

6. *No Recording.* Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

## **J. Termination**

### 1. *Disposition of Earnest Money after Termination*

- a. *To Buyer.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within five days after receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer, less \$5,000.00, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this contract. If, however, Buyer terminates this contract after the end of the Inspection Period for any reason other than as permitted under this contract, the Earnest Money shall be paid to Seller.
- b. *To Seller.* If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer will, within five days after receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Buyer.

2. *Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract and those obligations that survive termination under the express terms of this contract.

## **K. Closing**

1. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Delivery of Originals.* Seller will deliver to Buyer the originals of Seller's Records.
- e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.

### 2. *Transaction Costs*

- a. *Seller's Costs.* Seller will pay the basic charge for the Title Policy; one-half of the escrow fee charged by the Title Company; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by Seller; certificates or reports of ad valorem taxes and Seller's expenses and attorney's fees.
- b. *Buyer's Costs.* Buyer will pay one-half of the escrow fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession;

the costs to obtain the Survey; the costs to deliver copies of the instruments described in section A.5; the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by Buyer; the costs of work required by Buyer to have the survey reflect matters other than those required under this contract; the costs to obtain financing of the Purchase Price, including the incremental premium costs of mortgagee's title policies and endorsements and deletions required by Buyer's lender; and Buyer's expenses and attorney's fees.

- c. *Ad Valorem Taxes.* Buyer is a tax-exempt governmental entity and assumes no responsibility for taxes associated with Seller's ownership of the Property through the Closing Date. Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date. Seller's portion of the prorated taxes will be paid to Buyer at closing as an adjustment to the Purchase Price. If the assessment for the calendar year of closing is not known at the Closing Date, the proration will be based on taxes for the previous tax year, and Buyer and Seller will adjust the prorations in cash within thirty days of when the actual assessment and taxes are known. All taxes due as of closing will be paid at closing. After closing, Buyer may forward any tax bills attributable to Seller's ownership of the Property directly to Seller and Seller shall promptly pay such bill. If Buyer pays such bill, it may forward an invoice to Seller for reimbursement and Seller shall promptly pay such invoice. Buyer may pursue any remedies available at law or in equity to enforce the Seller's obligations under this paragraph. Seller's obligations under this paragraph shall survive closing.
- d. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.
- e. *Broker's Commissions.* Buyer will not be responsible for payment of any Broker's Commissions and Seller agrees to indemnify, defend and hold Buyer harmless from any loss, attorney's fees, court costs and other costs arising out of a claim by any person or entity claiming a fee or commission arising from this transaction.

3. *Issuance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

#### **L. Default and Remedies**

1. *Seller's Default.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

- a. *Termination; Liquidated Damages.* Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money, less \$5,000.00 as described above, returned to Buyer. Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, if Seller's Default occurs after Buyer has incurred costs to investigate the Property after the Effective Date and Buyer terminates this contract in accordance with the previous sentence, Seller will also pay to Buyer as liquidated damages the lesser of Buyer's actual out-of-pocket expenses incurred to investigate the Property after the Effective Date or the amount of Buyer's Liquidated Damages, within ten days after Seller's receipt of an invoice from Buyer stating the amount of Buyer's expenses.
- b. *Specific Performance.* Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this contract, but any such action must be initiated, if at all, within ninety days after the breach or alleged breach of this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

2. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may elect either of the following as its sole and exclusive remedy:

- a. *Termination; Liquidated Damages.* Seller may terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this contract and Seller terminates this contract in accordance with the previous sentence, Buyer will also reimburse Seller for the lesser of Seller's actual out-of-pocket expenses incurred to perform its obligations under this contract or the amount of Seller's Additional Liquidated Damages, within ten days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses.

3. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that Buyer's Liquidated Damages or the Earnest Money and Seller's Additional Liquidated Damages are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

4. *Attorney's Fees.* If either party retains an attorney to enforce this contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

## M. Miscellaneous Provisions

1. *Notices.* Any notice required by or permitted under this contract must be in writing. Any notice required by this contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. *Entire Contract.* This contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this contract.

3. *Amendment.* This contract may be amended only by an instrument in writing signed by the parties.

4. *Assignment.* Buyer may assign this contract only with the consent of Seller.

5. *Survival.* The obligations of this contract that cannot be performed before termination of this contract or before closing will survive termination of this contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

6. *Choice of Law; Venue; Alternative Dispute Resolution.* This contract will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for any dispute arising under this agreement shall be in the appropriate state court in Hays County, Texas having jurisdiction. Time permitting, the parties will submit in good faith to an alternative dispute resolution process before filing a suit concerning this contract.

7. *Waiver of Default.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this contract.

9. *Severability.* The provisions of this contract are severable. If a court of competent jurisdiction finds that any provision of this contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. *Counterparts.* If this contract is executed in multiple counterparts, all counterparts taken together will constitute this contract.

13. *Confidentiality.* The parties will keep confidential all information learned in the course of this transaction, except to the extent disclosure is required by the Texas Public Information Act, the Texas Open Meetings Act, other law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

14. *No Waiver of Immunity.* The parties agree that this contract is not a contract for goods or services and neither party waives any immunity from suit or liability of limitations on liability granted under applicable laws and constitution of the State of Texas.

15. *Subject to Approval.* This contract is subject to a) the approval of the San Marcos City Council; and b) the appropriation of lawfully available funds for payment of the Purchase Price and all of Buyer's Closing Costs by the San Marcos City Council. If no such approval is obtained and appropriation made within the Inspection Period, Seller shall have no recourse against Buyer for such reasons and this contract shall be of no further force and effect.

16. *Time Is of the Essence.* The parties hereto acknowledge and agree that, except as otherwise expressly provided in this Agreement, TIME IS OF THE ESSENCE for the performance of all actions (including, without limitation, the giving of Notice, the delivery of documents, and the funding of money) required or permitted to be taken under this Agreement. Whenever action must be taken (including, without limitation, the giving of Notice, the delivery of documents, or the funding of money) under this Agreement, prior to the expiration of, by no later than, or on a particular date, unless otherwise expressly provided in this Agreement, such action must be completed by 5 o'clock p.m. (Central Time) on such date, provided that such action must be completed by 5 o'clock p.m. (Central Time) with respect to the payment of the balance of the Purchase Price and other payments by Purchaser on the Closing Date. However, notwithstanding anything to the contrary herein, whenever action must be taken (including, without limitation, the giving of Notice, the delivery of documents, or the funding of money) under this Agreement prior to the expiration of, by no later than, or on a particular date that is not a business day, then such date shall be extended until the immediately following business day.

SIGNATURES ON NEXT PAGE

**SELLER:**

By: 

Name: Randy N. Greer

Title: Owner

Date: 12/05/19

By: 

Name: Patrice A. Greer

Title: Owner

Date: 12/5/19

**BUYER:**

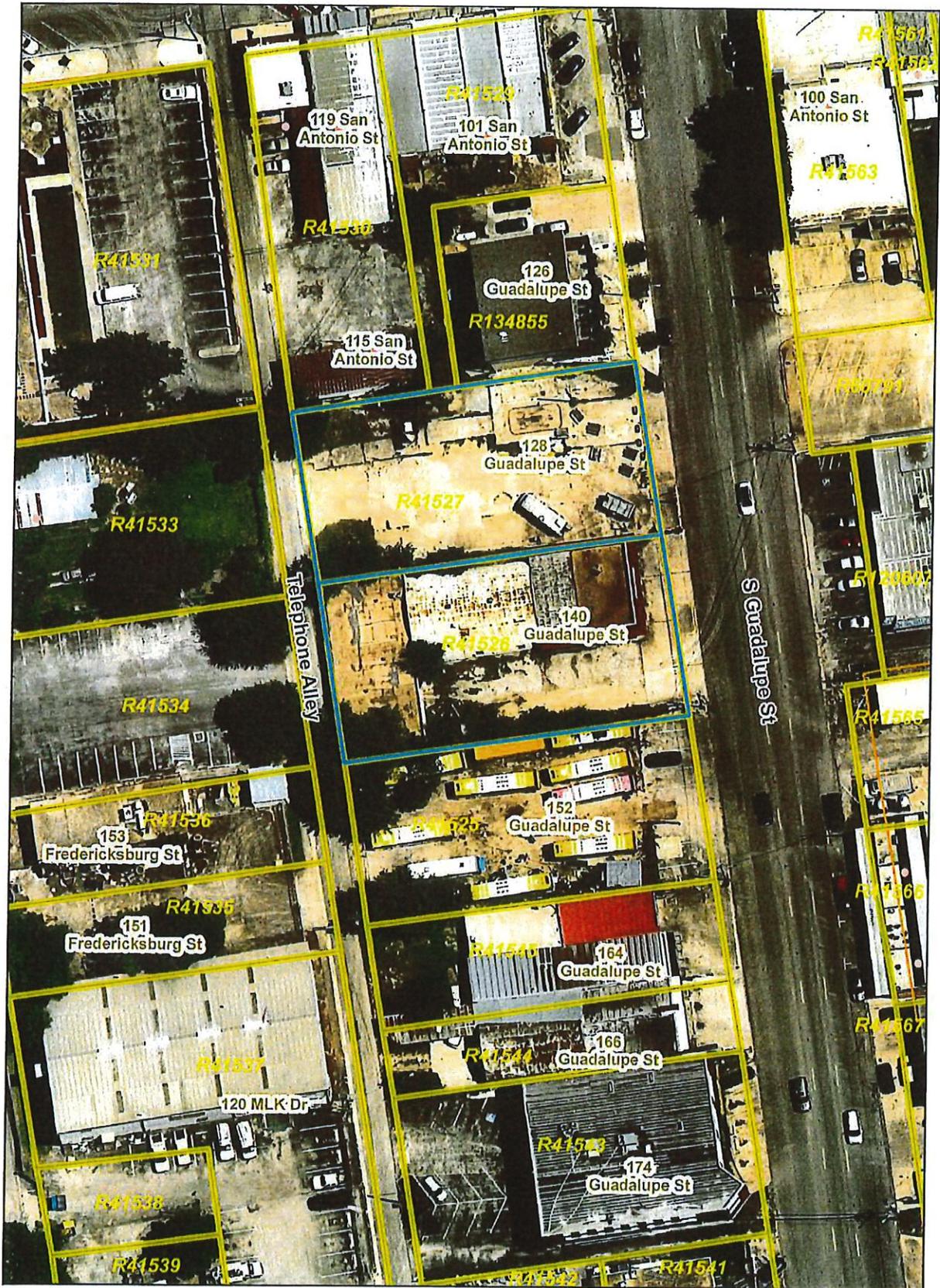
By: 

Name: Bert Lumbreras

Title: City Manager

Date: 12/05/19

# EXHIBIT "A"



0 20 40 80 120 160 200 Feet

## Exhibit B

### Representations; Environmental Matters

#### A. Seller's Representations

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* This contract is, and all documents required by this contract to be executed and delivered by each party at closing will be duly authorized, executed, and delivered by such party.
2. *Litigation.* There is no litigation pending or threatened against either party that might affect the Property or either party's ability to perform its obligations under this contract.
3. *Violation of Laws.* Neither party has received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or use of the Property.
4. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller agrees to provide any environmental, hazardous materials and other such reports or disclosures in its possession to Buyer within the deadline for providing Seller's Records. Other than such information, if any, Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.
5. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.
6. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.
7. *No Other Representation.* Except as stated above or in this Agreement Seller makes no other representation with respect to the Property.
8. *No Warranty.* Seller has made no warranty in connection with this contract.

**Exhibit C**  
**Seller's Records**

To the extent that Seller has possession of the following items pertaining to the Property, Seller will deliver or make the items or copies of them available to Buyer by the deadline stated in section A.7.:

**Governmental**

governmental licenses, certificates, permits, and approvals

tax statements for the current year and the last three years

notices of appraised value for the current year and the last three years

records of regulatory proceedings or violations (for example, condemnation, environmental)

**Land**

soil reports

environmental reports

water rights

engineering reports

prior surveys

site plans

**Facilities**

as-built plans, specifications, and mechanical drawings for improvements

engineering reports

environmental reports

operating and maintenance plans (for example, asbestos maintenance plans)

**Leases**

Leases

commission and leasing agent agreements

rent roll setting forth for each Lease:

tenant's name

square footage leased

date of expiration of current and renewal terms

renewal options

options to purchase any portion of the Property

rights of first refusal to lease other space

estoppel letters and/or subordination agreements

**TITLE COMPANY RECEIPT**

15,000.00

Title Company acknowledges receipt of Earnest Money in the amount of \$5,000.00 and a copy of this contract executed by both Buyer and Seller.

**San Marcos Title Company**

By: Sarah Vasquez

Name: Sarah Vasquez

Date: 12/12/19

City of San Marcos, TX 78666

PAGE: 1 OF 1

CHECK NUMBER: 00057516

| INVOICE DATE | INVOICE NUMBER | DESCRIPTION                                   | INVOICE AMOUNT |
|--------------|----------------|---|----------------|
| 12/05/2019   | INV-120519     | EARNEST MONEY PROPERTY 140 & 128 GUADALUPE ST | \$15,000.00    |

S/11837

ty/businessforms.com 877.749.2030

FORM # PS08BX

| VENDOR NO | VENDOR NAME              | CHECK NO | CHECK DATE | CHECK AMOUNT |
|-----------|--------------------------|----------|------------|--------------|
| 207476    | SAN MARCOS TITLE COMPANY | 57516    | 12/11/2019 | \$15,000.00  |



**City of San Marcos**  
 ACCOUNTS PAYABLE  
 630 E Hopkins  
 San Marcos, TX 78666  
 Ph. (512) 393-8170

Wells Fargo, N.A.  
 123 N. Edward Gary St  
 San Marcos, TX  
 37-65  
 1119

Vendor Number: 207476  
 Check Number: 57516  
 Check Date: 12/11/2019

VOID 90 DAYS FROM DATE OF ISSUE

\$15,000.00

Pay \*\*\*Fifteen Thousand Dollars and 00 Cents\*\*\*

To the Order Of  
 SAN MARCOS TITLE COMPANY  
 100 E SAN ANTONIO ST  
 SUITE 101  
 SAN MARCOS, TX 78666-0000

*[Signature]*  
 Authorized Signature MP  
*[Signature]*  
 Authorized Signature MP

⑈00057516⑈ ⑆111900659⑆ 2399110200⑈

**AMENDMENT TO REAL ESTATE SALES CONTRACT  
TO EXTEND INSPECTION PERIOD**

This Amendment to Real Estate Sales Contract to Extend Inspection Period is entered into by and between the City of San Marcos, Texas ("Buyer") and Randy N. and Patrice A. Greer ("Seller"). Buyer and Seller may also be referred to herein as the "Parties."

**RECITAL**

The Parties entered into a Real Estate Sales Contract for the sale of Lots 2 and 3, Block 12, Original Town of San Marcos, commonly known as 140 and 128 South Guadalupe Street, San Marcos, Texas 78666 (the "Contract"). Under Section G of the Contract, Buyer is granted an Inspection Period. Section A.8 of the Contract provides for a 120-day Inspection Period that expires April 10, 2020. The Parties wish to extend the Inspection Period as provided below.

**AGREEMENT**

1. In consideration of the mutual benefits to the Parties herein, the Parties agree that the Contract is hereby amended as follows:

a. The End of Inspection Period under Section A.8 of the Contract is hereby extended to June 10, 2020.

b. On or before April 1, 2020, Buyer will deposit with the Title Company an additional \$7,500.00 as compensation to Seller for such extension of the Inspection Period. If Buyer closes on the purchase of the Property, such additional \$7,500.00 will be deducted from the Purchase Price at Closing.

2. All other terms and conditions set forth in the Contract shall remain in full force and effect.

EXECUTED to be effective as of the date of the last signature below.

**BUYER:**

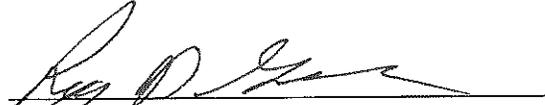
By:

  
Bert Lumbreras, City Manager

Date:

3/27/2020

**SELLER:**

  
Randy N. Greer

  
Patrice A. Greer

**AMENDMENT TO REAL ESTATE SALES CONTRACT  
TO EXTEND INSPECTION PERIOD**

This Amendment to Real Estate Sales Contract to Extend Inspection Period is entered into by and between the City of San Marcos, Texas (“Buyer”) and Patrice A. and Randy N. Greer (“Seller”). Buyer and Seller may also be referred to herein as the “Parties.”

**I. RECITALS**

**1.1.** The Parties entered into a Real Estate Sales Contract for the sale of Lots 2 and 3, Block 12, Original Town of San Marcos, commonly known as 128 & 140 South Guadalupe Street, San Marcos, Texas 78666 (the “Contract”). Under Section G of the Contract, Buyer is granted an Inspection Period. Section A.8 of the Contract provides for the duration for the Inspection Period.

**1.2.** During the original Inspection Period, an environmental site assessment and testing were conducted on the Property. The testing revealed the presence of certain hazardous or toxic chemicals and the Parties seek to enable further testing regarding such chemicals.

**1.3.** In addition, the Parties wish to coordinate with each other to enroll the Property into the Texas Commission of Environmental Quality Voluntary Cleanup Program under mutually agreed terms and conditions for the sale of the Property yet to be negotiated by the Parties.

**1.4.** An extension of the Inspection Period is necessary: a) provide more time for additional testing on the Property to be completed and the results of such testing to be analyzed; and b) for the Parties to negotiate revised or supplemental terms and conditions for the sale of the Property under the Contract in light of the above circumstances.

**1.5.** For these reasons, the Parties wish to extend the duration of the Inspection Period as provided below.

**II. AGREEMENT**

**1.** In consideration of the mutual benefits to the Parties herein, the Parties agree that the Contract is hereby amended as follows: The End of Inspection Period under Section A.8 of the Contract is hereby extended to August 29, 2020.

**2.** All other terms and conditions set forth in the Contract shall remain in full force and effect, except as further amended by mutual agreement of the Parties in writing.

EXECUTED to be effective as of the date of the last signatures of Buyer and Seller below.

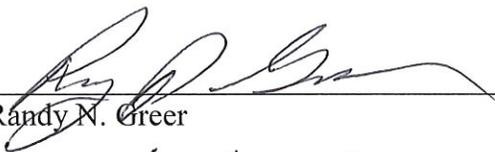
SIGNATURES ON NEXT PAGE

**BUYER:**

By:   
Name: Joe Pantaliso  
Title: Assistant City Manager  
Date: 6/8/2020

**SELLER:**

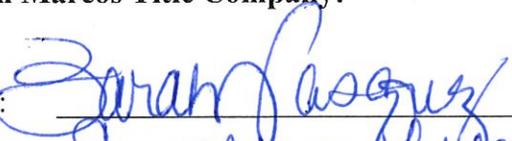
  
Patrice A. Greer  
Date: 6/8/2020

  
Randy N. Greer  
Date: 6/5/20

**TITLE COMPANY RECEIPT**

Title Company acknowledges receipt of this Amendment to Real Estate Sales Contract to Extend Inspection Period

**San Marcos Title Company:**

By:   
Name: San Marcos Title  
Date: 6/8/2020

**AMENDMENT TO REAL ESTATE SALES CONTRACT  
TO EXTEND INSPECTION PERIOD**

This Amendment to Real Estate Sales Contract to Extend Inspection Period is entered into by and between the City of San Marcos, Texas ("Buyer") and Randy N. and Patrice A. Greer ("Seller"). Buyer and Seller may also be referred to herein as the "Parties."

**I. RECITALS**

1.1 The Parties entered into a Real Estate Sales Contract for the sale of Lots 2 and 3, Block 12, Original Town of San Marcos, commonly known as 128 & 140 South Guadalupe Street, San Marcos, Texas 78666 (the "Contract"). Under Section G of the Contract, Buyer is granted an Inspection Period. Section A.8 of the Contract provides for the duration for the Inspection Period.

1.2 During the original Inspection Period, an environmental site assessment and testing were conducted on the Property. The testing revealed the presence of certain hazardous or toxic chemicals and the Parties seek to enable further testing regarding such chemicals.

1.3 In addition, the Parties wish to coordinate with each other to enroll the Property into the Texas Commission of Environmental Quality Voluntary Cleanup Program under mutually agreed terms and conditions for the sale of the Property yet to be negotiated by the Parties.

1.4 An extension of the Inspection Period is necessary: a) provide more time for additional testing on the Property to be completed and the results of such testing to be analyzed; and b) for the Parties to negotiate revised or supplemental terms and conditions for the sale of the Property under the Contract in light of the above circumstances.

1.5 For these reasons, the Parties wish to extend the duration of the Inspection Period as provided below.

**II. AGREEMENT**

1. In consideration of the mutual benefits to the Parties herein, the Parties agree that the Contract is hereby amended as follows: The End of Inspection Period under Section A.8 of the Contract is hereby extended to October 28, 2020.

2. On or before August 29, 2020, Buyer will deposit with the Title Company an additional \$15,00.00 as compensation to Seller for such extension of the Inspection Period. If Buyer closes on the purchase of the Property, such additional \$15,00.00 will be deducted from the Purchase Price at Closing.

3. All other terms and conditions set forth in the Contract shall remain in full force and effect, except as further amended by mutual agreement of the Parties in writing.

EXECUTED to be effective as of the date of the last signatures of the Buyer and Seller below.

**SIGNATURES ON NEXT PAGE**

**BUYER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SELLER:**

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**TITLE COMPANY RECEIPT**

Title Company acknowledges receipt of this Amendment to Real Estate Sales Contract to Extend Inspection Period.

**San Marcos Title Company:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

AMENDMENT TO REAL ESTATE SALES CONTRACT  
TO REVISE PURCHASE PRICE TERMS AND CONDITIONS

This Amendment to Real Estate Sales Contract to Revise Purchase Price Terms and Conditions is entered into by and between the City of San Marcos, Texas (“Buyer”) and Randy N. and Patrice A. Greer (“Seller”). Buyer and Seller may also be referred to herein as the “Parties.”

RECITAL

The Parties entered into a Real Estate Sales Contract for the sale of Lots 2 and 3, Block 12, Original Town of San Marcos, commonly known as 140 and 128 South Guadalupe Street, San Marcos, Texas 78666 (the “Contract”). Pursuant to such Contract, Buyer and Seller agreed to a Purchase Price (“Purchase Price”) of \$1,600,000.00 (one million six hundred thousand dollars). The Parties wish to revise the Purchase Price as provided below.

AGREEMENT

1. In consideration of the mutual benefits to the Parties herein, the Parties agree that the Contract is hereby amended as follows:

Purchase Price. Buyer shall pay to Seller for the Property \$1,600,000.00 (one million six hundred thousand dollars), as follows:

\$1,375,000.00 (one million three hundred seventy-five thousand dollars) by wire transfer within ten (10) days of the closing date of this transaction; and

\$225,000 (two-hundred twenty-five thousand dollars) (the “Holdback Funds”) to be retained by Buyer and distributed as follows:

Holdback. Buyer shall retain the Holdback Funds at closing for the purposes of funding the following: (1) investigating and analyzing the Property’s groundwater and TCEQ regulatory requirements regarding same; (2) drafting, preparing, and submitting a Voluntary Cleanup Program (“VCP”) application for the Property; (3) negotiating and pursuing Texas Commission on Environmental Quality (“TCEQ”) approval of the VCP application; (4) negotiating and pursuing TCEQ approval of any additional or revised remediation plan (the “Plan”) for the Property; (5) implementing the approved Plan’s requirements; (6) attaining a “No Further Action” letter or similar written correspondence from TCEQ indicating that TCEQ has confirmed that all necessary activities are completed satisfactorily and no additional actions are required; and (7) all outside counsel legal fees associated with the above items and pursuing the agreement and approval of the Parties to the Contract.

Within thirty (30) days of receiving written notice of the successful completion of the Holdback provisions above herein, Buyer shall provide the Seller an accounting, with supporting documentation, of all associated expenses incurred (“the Accounting”). Such expenses shall include all consultant fees and expenses, both legal and technical, incurred by Buyer for purposes of accomplishing the Holdback tasks above herein.



Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 7, 2020

Ms. Laurie Moyer, P.E., Director  
Engineering & CIP  
City of San Marcos

### Via Email

Re: Greer Tracts (site), 128 and 140 S. Guadalupe St., San Marcos, Hays County, TX;  
Voluntary Cleanup Program (VCP) No. 3102; Customer No. CN600521272;  
Regulated Entity No. RN103962833

Dear Ms. Moyer:

The Texas Commission on Environmental Quality (TCEQ) has received your Voluntary Cleanup Program Application, submitted pursuant to Texas Voluntary Cleanup Program statute §361.604 of the Texas Solid Waste Disposal Act (SWDA) for assistance and review of site investigation and cleanup activities for the above referenced site. After careful review, the application is determined to be administratively complete, and the site is eligible for the VCP.

As specified in §361.606 of the SWDA, a voluntary party must enter into a voluntary cleanup agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans prior to any assistance and review by the TCEQ. Please complete the enclosed VCP Agreement form with original signature(s) and submit it within 30 days of the date of this letter.

Please note that §361.606(d) of the SWDA states that if an agreement is not reached between a person desiring to participate in the VCP and the Executive Director 30 days after good faith negotiations have begun (i.e., the date of this letter), either party may withdraw from the negotiations, and the TCEQ will retain the person's application fee. Please reference VCP No. 3102 on the front of any future letters or reports. Please provide one paper copy and one electronic copy (on USB or disc) of your response. Note that the electronic and hard copies should be identical, complete copies. A Correspondence ID Form (TCEQ Form 20428) must accompany each document submitted to the Remediation Division and should be affixed to the front of your submittal. Future submittals should be mailed to the VCP-CA Section, mail code MC-221, at the letterhead address.

Ms. Laurie Moyer, P.E.

Page 2

October 7, 2020

VCP 3102

You may contact Ms. Westerman with any questions about your application's status at (512) 239-5696 or [jennifer.westerman@tceq.texas.gov](mailto:jennifer.westerman@tceq.texas.gov).

Sincerely,



Iryna Kushnirsky, Team Leader  
VCP-CA Section  
Remediation Division  
Texas Commission on Environmental Quality

Enclosure: VCP Agreement form

cc: Ms. Patrice Greer for Mr. Randy N. Greer (via email)  
Mr. Cal Chapman, P.E., Chapman Engineering (via email)  
Mr. Duncan Norton, Lloyd Gosslink Rochelle & Townsend (via email)  
Mr. Elijah Gandee, Waste Section Manager, TCEQ Region 11 Office, Austin

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY VOLUNTARY CLEANUP PROGRAM AGREEMENT

## INTRODUCTION

This Agreement is entered into voluntarily by City of San Marcos and Randy N. Greer  
\_\_\_\_\_ (Applicant) and the executive director of the Texas Commission on Environmental Quality (TCEQ). This Agreement is not and shall not be construed as an admission of any liability under the Texas Solid Waste Disposal Act or any other law or as a waiver of any defense to such liability. No approval hereunder or receipt of funds hereby shall be taken as a warranty as to sufficiency or efficacy of the response action. The purpose of this Agreement is to detail the obligations and functions of each party, related to the voluntary response action process at the Greer Tracts \_\_\_\_\_ (Site), Voluntary Cleanup Program (VCP) No. 3102 .

The activities conducted by the Applicant under this Agreement are subject to approval by TCEQ. The activities conducted by the Applicant shall be consistent with this Agreement, all applicable laws and regulations and any appropriate guidance documents. Applicant shall employ sound scientific, engineering and construction practices.

## STATEMENT OF ELIGIBILITY

The executive director has determined that the application submitted by the Applicant is complete and that the Site is eligible to participate in the VCP established under Subchapter S of Chapter 361 of the Health and Safety Code (HSC). If the TCEQ determines that the Applicant withheld or misrepresented information that would be relevant to the Site's eligibility, the executive director may exercise his/her right to withdraw from this Agreement.

## PARTIES BOUND

This Agreement shall apply to and be binding upon the Applicant, its officers, directors, principals, employees, receivers, trustees, agents, successors, subsidiaries over which the Applicant exercises control and assigns and upon the TCEQ, its employees, agents, assigns and successors. The signatories to this Agreement certify that they are fully authorized to execute and legally bind the parties they represent. No change in ownership, corporate, or partnership status of the Applicant shall in any way alter its status or responsibilities under this Agreement unless Applicant or TCEQ withdraws from this Agreement.

The Applicant shall provide a copy of this Agreement to any subsequent business owners or successors before ownership rights are transferred. If the Applicant is also the owner of the Site, the Applicant shall provide a copy of this Agreement to prospective purchasers of the Site prior to transfer of title. The Applicant shall provide a copy of this Agreement to all contractors and consultants who are retained to conduct any work performed under this Agreement, within 14 days after the effective date of this Agreement or within 14 days after the date of retaining their services, whichever is later.

## DEFINITIONS

"Site" means the area described in the VCP application, attached and incorporated herein as Exhibit "A" or, if the executive director approves the Applicant's request to address a partial response action area, then only that portion (i.e., the partial response action area) of the area described in Exhibit "A."

## ADDRESSES FOR ALL CORRESPONDENCE

Documents, including reports, approvals, notifications, disapprovals, and other correspondence to be submitted under this Agreement, may be sent by certified mail, return receipt requested, hand delivery, overnight mail or by courier service to the following addresses or to such addresses as the Applicant or TCEQ may designate in writing.

Documents to be submitted to TCEQ should be sent to:

### Mailing Address

### Overnight/Express Mail Address

Ms. Jennifer Westerman, Project Manager  
VCP-CA Section, MC-221  
P.O. Box 13087  
Austin, TX 78711-3087

Ms Jennifer Westerman, Project Manager  
VCP-CA Section, MC-221  
12100 Park 35 Circle  
Austin, TX 78753

Documents to be delivered to the Applicant should be sent to (include name, address and phone number):

Laurie Moyer, P.E.  
City of San Marcos - Eng. Dept.  
630 E. Hopkins  
San Marcos, Tx 78666  
512-393-8130

Randy N. Greer  
118 Timber Ridge  
San Marcos, Tx 78666  
512-757-1005

## COMPLIANCE WITH APPLICABLE LAWS

All work undertaken by the Applicant pursuant to this Agreement shall be performed in compliance with all applicable federal, state and local laws, ordinances and regulations, including, but not limited to, all Occupational Safety and Health Administration, Department of Transportation and Resource Conservation and Recovery Act regulations. In the event of a conflict in the application of federal, state, or local laws, ordinances and regulations, the Applicant shall comply with the more/most stringent such laws, ordinances, or regulations, unless authorized otherwise in writing by TCEQ. Federal requirements shall be followed if they are the more/most stringent. However, as provided by HSC, Section 361.611 a state or local permit shall not be required, although the Applicant must coordinate with ongoing federal and state hazardous waste programs and must comply with the substantive requirements of an otherwise required state permit. Where it is determined that a permit is required under federal law, the Applicant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The Applicant shall be responsible for obtaining all federal permits which are necessary for the performance of any work hereunder.

APPLICABLE RULES AND REGULATIONS

The VCP rules, 30 Texas Administrative Code (TAC) 333, Subchapter A and the following rules or regulations are specifically designated as being directly applicable for the Site and must be followed. Citation of these rules does not imply that they are the only applicable rules.

- \_\_\_ 30 TAC 350 (Texas Risk Reduction Program Rules - TRRP)
\_\_\_ 30 TAC 334 (Petroleum Storage Tank Rules)
\_\_\_ Other \_\_\_\_\_

SUBMITTALS AND SCHEDULES

The following plans and reports were included with the VCP application, in this Agreement, or have been added by amendment to this Agreement:

- X Phase I Environmental Site Assessment (ESA)
X Phase II/Limited Phase II ESA
\_\_\_ Affected Property Assessment Report - Texas Risk Reduction Program (TRRP) Rules
\_\_\_ Response Action Plan (TRRP)
\_\_\_ Other: \_\_\_\_\_

In compliance with the aforementioned rules or regulations, the required submittals shall include a monthly status report, which describes all activities completed for the current month and those planned for the upcoming month. In order to complete the voluntary cleanup activities which are necessary for Certificate of Completion issuance, the following plans and reports will be submitted according to the schedule specified below (put anticipated date of submittal of report in blanks or NA if not applicable):

- TRRP Submittals:
Affected Property Assessment Report \_\_\_\_\_
Response Action Plan \_\_\_\_\_
Response Action Completion Report \_\_\_\_\_
Response Action Effectiveness Reports \_\_\_ \_\_\_\_\_
Post-Response Action Completion Reports \_\_\_\_\_
Monthly Status Report will be submitted by the \_\_\_ of each month.
Other reports (or indicate if attached Exhibit B): \_\_\_\_\_

If the Applicant is self-implementing to Remedy Standard A, a completed TCEQ Form 10323 (Self-Implementation Notice) must be attached to this Agreement. If the Applicant is self-implementing, TCEQ will not review or comment on site-specific issues submitted by the Applicant prior to submittal of the Response Action Completion Report (RACR) or the Response Action Effectiveness Report if the RACR has not been previously submitted.

Petroleum Storage Tank Submittals:

Release Determination Report (TCEQ-0621) \_\_\_\_\_

Assessment Report Form (TCEQ-0562) \_\_\_\_\_

Plan B Risk Assessment Report \_\_\_\_\_

Corrective Action Plan Worksheets (TCEQ-0707) \_\_\_\_\_

Operation, Monitoring and Performance Report Form (TCEQ-0696) \_\_\_\_\_

Site Closure Request Form (TCEQ-0028) \_\_\_\_\_

Other Reports (or indicate if attached Exhibit B): \_\_\_\_\_

The TCEQ may terminate this Agreement if:

- 1) the aforementioned submittals are not submitted by the time frames stated above unless TCEQ approves an Applicant's revised schedule; or
- 2) responses to TCEQ comments on the aforementioned submittals are not submitted in accordance with time frames provided in TCEQ comments letters.

Proposed future land use to be achieved:

\_\_\_\_ Residential (i.e., unrestricted)

Non-residential (i.e., commercial/industrial)

\_\_\_\_ Other (e.g., agricultural or recreational) \_\_\_\_\_

#### DESIGNATED PROJECT MANAGER

On or before the effective date of this Agreement, the TCEQ and the Applicant shall each designate a project manager. Each project manager shall be responsible for overseeing the implementation of this Agreement. The TCEQ project manager will be the TCEQ- designated representative at the Site. To the maximum extent possible, communications between the Applicant and TCEQ and all documents (including reports, approvals and other correspondence) concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the project managers. During implementation of this Agreement, the respective project managers shall whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues. Each party has the right to change its respective project manager by notifying the other party in writing at least five days prior to the change.

#### ACCESS

To the extent that the Site or other areas where work is to be performed hereunder is presently owned or controlled by parties other than those bound by this Agreement, the Applicant shall obtain, or shall use its best efforts to obtain access agreements from the present owners. Best efforts shall include at a minimum, a certified letter from Applicant to the present owner of such property requesting an access agreement to permit Applicant, TCEQ, their authorized representatives and persons designated by the TCEQ in accordance with HSC, Section 361.752(c) access to such property. Any such access agreement shall be incorporated by reference into this Agreement. Such an agreement shall provide access for Applicant, TCEQ and authorized representatives of TCEQ, and persons designated by the TCEQ in accordance with

HSC, Section 361.752(c), as specified below. In the event that such access agreement is not obtained, the Applicant shall so notify TCEQ, which may then, at its discretion, assist the Applicant in gaining access.

The Applicant shall provide authorized representatives of TCEQ access to the Site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed on the Site and shall include, but not be limited to inspecting records, operating logs and contracts related to the Site; reviewing the progress of the Applicant in carrying out the terms of this Agreement; conducting such tests, inspections, and sampling as TCEQ may deem necessary; using a camera, sound recording, or other documentary type equipment for field activities; and verifying the data submitted to TCEQ by the Applicant hereunder. The Applicant shall permit TCEQ's authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Agreement and over which the Applicant may exercise control. All persons with access to the Site pursuant to this Agreement shall comply with submitted health and safety plans. The TCEQ does not approve health and safety plans.

#### DISPUTE RESOLUTION

This section (Dispute Resolution) shall apply to any dispute arising under any section of this Agreement, unless specifically excepted. It should be noted, that as provided for in HSC, Section 361.607, the executive director or the Applicant in its sole discretion may terminate the Agreement by giving 15 days advanced written notice to the other.

The parties shall use their best effort to, in good faith; resolve all disputes or differences of opinion informally. If, however, disputes arise concerning this Agreement which the parties are unable to resolve informally, the Applicant may present written notice of such dispute to TCEQ and set forth specific points of dispute and the position of the Applicant. This written notice shall be submitted no later than five calendar days after the Applicant discovers the project managers are unable to resolve the dispute. The Applicant's project manager shall notify the TCEQ's project manager immediately by phone or other appropriate methods of communication prior to written notice, when he/she believes the parties are unable to resolve a dispute. Within ten days of receipt of such a written notice, the TCEQ will provide a written response to the Applicant setting forth its position and the basis therefore. During the five calendar days following the receipt of the response, the parties shall attempt to negotiate in good faith a resolution of their differences. If during this negotiation period, the TCEQ concurs with the position of the Applicant, the Applicant will be notified in writing and this Agreement shall be modified to include any necessary extensions of time or variances of work.

Following the expiration of the previously described time periods, if no resolution of the disputed issue(s) has been reached, the executive director shall make a determination regarding the dispute, based upon and consistent with the terms of this Agreement and will provide written documentation of such determination to the Applicant.

At this juncture, if dispute resolution fails and either or both parties exercise their right to withdraw from the Agreement by giving 15 days advance written notice to the other, only those costs incurred or obligated by the TCEQ before notice of termination of the Agreement are recoverable under the Agreement.

## RESERVATION OF RIGHTS

TCEQ and Applicant reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein.

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person, firm, partnership or corporation, not a party to this Agreement for any liability it may have arisen out of, or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous waste, contaminants or pollutants at, to or from the Site. The parties to this Agreement expressly reserve all rights, claims, demands, and causes of action they have against each other, and against any and all other persons and entities who are not parties to this Agreement.

The Applicant reserves the right to seek contribution, indemnity, or any other available remedy against any person other than TCEQ found to be responsible or liable for contribution, indemnity or otherwise for any amounts which have been or will be expended by the Applicant in connection with the Site.

During the term of this Agreement, TCEQ will not bring an enforcement action against Applicant for any violations of statutes or regulations for the specific violations or releases that are being remediated by this Agreement, unless the Applicant or TCEQ withdraws from this Agreement prior to completion of the response action. However, a responsible party remains liable for contamination should response action standards change or additional contamination be discovered. Non-responsible party Applicants have a release from liability upon issuance of the Certificate of Completion subject to statutory conditions in Section 361.610(c) HSC.

## ADMINISTRATIVE COSTS

Applicant A, unless indicated otherwise in Exhibit "A", agrees to reimburse TCEQ for all of its costs associated with implementation of this Agreement. TCEQ's costs may include direct and indirect costs of overhead, salaries, equipment, utilities, legal, management and support costs associated with the review of the Applicant's work plans and reports and oversight of field activities.

The TCEQ will track all costs to the TCEQ for review and oversight activities related to the Site and provide monthly invoices to the person responsible, per this Agreement for said costs. If TCEQ costs are less than the application fee of one thousand (\$1,000) dollars, the remaining balance in the Site account will not be refunded. The Applicant shall pay these invoiced costs to the TCEQ within 30 days after the date the Applicant receives notice that these costs are due and owing. If payment is not made within 30 days after the date the second notice that these costs are due and owing is sent, the TCEQ will stop reviewing any site-related submittals. If payment is not made within 30 days after the date the third notice is sent, the TCEQ shall terminate this Agreement and request that the attorney general bring action to recover all costs allowed by law.

Checks shall be made payable to the Texas Commission on Environmental Quality and be mailed along with a transmittal letter stating the Site name, VCP number, and addressed to the Texas Commission on Environmental Quality; MC-214; Attention: Cashier; P.O. Box 13088, Austin, Texas, 78711-3088.

In the event that this Agreement is terminated for any reason, Applicant A, unless indicated otherwise in Exhibit "A", agrees to reimburse TCEQ for all costs incurred or obligated by the TCEQ before notice of termination of the Agreement.

## NOTICE OF BANKRUPTCY

As soon as Applicant has knowledge of its intention to file bankruptcy or no later than seven days prior to the actual filing of a voluntary bankruptcy petition, Applicant shall notify TCEQ of its intention to file a bankruptcy petition. In the case of an involuntary bankruptcy petition, Applicant shall give notice to the TCEQ as soon as it acquires knowledge of such petition.

## INDEMNIFICATION

The Applicant agrees to indemnify and save and hold the State of Texas, its agencies, successors, departments, agents and employees, harmless from any and all claims, damages or causes of action arising from or on account of, the willful or negligent acts or omissions of the Applicant, its officers, directors, principals, employees, receivers, trustees, agents, successors, subsidiaries over which the Applicant exercises control and assigns in carrying out the activities pursuant to this Agreement. By entering into this Agreement, the Applicant does not assume any liability arising from the acts or omissions of the TCEQ or its agents or employees in carrying out any activities pursuant to this Agreement.

## EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Agreement shall be the date on which this Agreement is signed by the Executive Director of TCEQ or his/her authorized representative.

This Agreement may be amended by mutual agreement of TCEQ and the Applicant. Amendments shall be in writing and shall be effective when signed by the Executive Director of TCEQ, or his/her authorized representative.

## TERMINATION AND SATISFACTION

The provisions of the Agreement shall be satisfied when TCEQ gives the Applicant written notice in the form of a Final Certificate of Completion that the Applicant has demonstrated to TCEQ's satisfaction that all terms of this Agreement have been completed, including the selection and implementation of a response action, when appropriate.

Nothing in the Agreement shall restrict the State of Texas from seeking other appropriate relief to protect human health or the environment from pollution or contamination at or from this Site not remediated in accordance with this Agreement.

SIGNATURES

Applicant A

By: \_\_\_\_\_  
(signature)  
Date: \_\_\_\_\_

Name: Laurie Moyer, P.E.  
(print or type)  
Title: Director of Engineering & CIP

Applicant B

By: \_\_\_\_\_  
(signature)  
Date: \_\_\_\_\_

Name: Randy N. Greer  
(print or type)  
Title: Owner

Applicant C

By: \_\_\_\_\_  
(signature)  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(print or type)  
Title: \_\_\_\_\_

Applicant D

By: \_\_\_\_\_  
(signature)  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(print or type)  
Title: \_\_\_\_\_

TCEQ Representative

By: \_\_\_\_\_  
(signature of authorized representative)  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(print or type)  
Title: \_\_\_\_\_

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
VOLUNTARY CLEANUP PROGRAM AGREEMENT  
ADDITIONAL APPLICANTS FORM**

Applicant E

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Applicant F

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Applicant G

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Applicant H

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

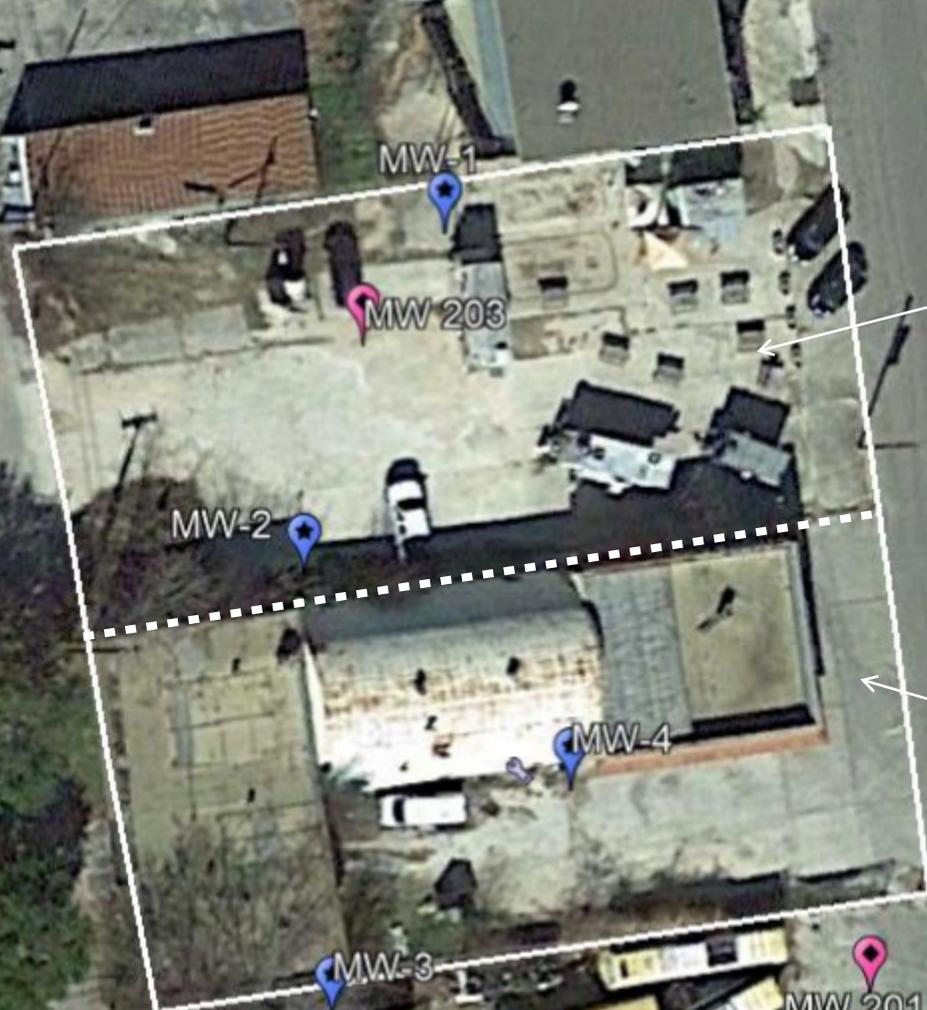
Title: \_\_\_\_\_

# City of San Marcos

Greer Tracts

## Legend

-  Comet Cleaners
-  MW
-  Property Boundary



128

140

Google Earth

© 2020 Google



100 ft



## Legislation Text

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**File #:** Res. 2020-223R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-223R, approving a Real Estate Sales Contract with Patricia R. Murphy and Mary O. Black for the city to purchase lot 1, block 12 of the original town of San Marcos, located at 152 South Guadalupe street, for a price of \$824,000, plus any associated closing costs; approving the execution of said contract by the City Manager, or his designee, on behalf of the city; authorizing the city manager, or his designee, to execute any related closing documents on behalf of the city; and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** CIP/Engineering

**Amount & Source of Funding**

**Funds Required:** \$824,000

**Account Number:** [Click or tap here to enter text.](#)

**Funds Available:** [Click or tap here to enter text.](#)

**Account Name:** TIRZ #5, C614 - Downtown Property Acquisition

**Fiscal Note:**

**Prior Council Action:** Ordinance 2020-046

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Downtown Vitality

[Choose an item.](#)

[Choose an item.](#)

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - [Choose an item.](#)
- Environment & Resource Protection - [Choose an item.](#)
- Land Use - Direct Growth, Compatible with Surrounding Uses
- Neighborhoods & Housing - [Choose an item.](#)
- Parks, Public Spaces & Facilities - [Choose an item.](#)
- Transportation - [Choose an item.](#)

- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Downtown Master Plan

**Background Information:**

In June, the City Council approved an amendment to the Downtown Tax Increment Reinvestment Zone #5 Project and Financing Plan. The amendment included funding for the acquisition of property for parking and other public priorities. This resolution authorizes the City Manager to close on Lot 1, Block 12 of the Original Town of San Marcos located at 152 S. Guadalupe Street.

Additional information regarding the properties:

- The final use of the property has not been determined. As per the TIRZ and agenda form the properties are identified for parking or other public priorities.
- As part of the due diligence in purchasing the properties, monitoring wells were installed for soil and groundwater analysis purposes.
- No soil contamination was found but tetrachloroethane (PERC) and trichloroethane (PCE) were found above Protective Contamination Levels (PCLs) in one well. These chemicals are typically associated with dry cleaning operations.
- Based upon analysis the source of the contamination is 128 & 140 S. Guadalupe.
- The current property owner & the City have been accepted into the Texas Commission on Environmental Quality's the Voluntary Cleanup Program. An amount above the anticipated cleanup costs is being withheld from the purchase payment to fund the effort.
- Because there is no clean-up responsibilities associated with 152 S. Guadalupe, no funding is being withheld.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Click or tap here to enter text.

**RESOLUTION NO. 2020-223R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A REAL ESTATE SALES CONTRACT WITH PATRICIA R. MURPHY AND MARY O. BLACK FOR THE CITY TO PURCHASE LOT 1, BLOCK 12 OF THE ORIGINAL TOWN OF SAN MARCOS, LOCATED AT 152 SOUTH GUADALUPE STREET, FOR A PRICE OF \$824,000, PLUS ANY ASSOCIATED CLOSING COSTS; APPROVING THE EXECUTION OF SAID CONTRACT BY THE CITY MANAGER, OR HIS DESIGNEE, ON BEHALF OF THE CITY; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ANY RELATED CLOSING DOCUMENTS ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The attached Real Estate Sales Contract, as amended (the "Contract") is approved.

**PART 2.** The execution of the Contract by the City Manager, or his designee, is approved and the City Manager, or his designee is authorized to execute all related closing documents on behalf of the City.

**PART 3.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on October 20, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

029175SMT

### Real Estate Sales Contract

This contract to buy and sell real property is between Seller and Buyer as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer as parties to this contract and by Title Company to acknowledge receipt of the Earnest Money. Buyer must deliver the Earnest Money to Title Company and obtain Title Company's signature before the Earnest Money Deadline provided in section A.1. for this contract to be effective.

**Seller:** Patricia R. Murphy and Mary O. Black

Address: 15 Pillow Road, San Marcos, TX 78666

Phone:

E-mail:

**Seller's Broker:** Linda Peterson, RE/MAX Hill Country

Address: 219 North Comanche, San Marcos, TX 78666

Phone: 512.353.6500

E-mail: LindaPeterson@remax.net

**Buyer:** City of San Marcos

Address: 630 East Hopkins Street, San Marcos, TX 78666

Phone: 512.393.8137

E-mail: psteed@sanmarcostx.gov

Type of entity: Municipal corporation

Buyer's Broker: N/A

**Property:** 152 South Guadalupe Street, San Marcos, TX 78666, BEING: Lot 1, Block 12, Original Town of San Marcos, Hays County, Texas, according to the map or plat thereof recorded in Volume 46, Page 448 of the Deed Records of Hays County, Texas, 78666, respectively, as shown in Exhibit A, together with improvements to the Land ("Improvements") and any leases associated with the Land and Improvements ("Leases").

**Title Company:** San Marcos Title Company

Address: 100 East San Antonio Street, San Marcos, TX 78666

Phone: 512.353.1782

E-mail: sdavid@smtitle.com

**Purchase Price:** \$824,000

**Earnest Money:** \$10,000

**Surveyor:** Byrn & Associates, Inc., San Marcos, Texas

**Survey Category:** 1A

**Buyer's Liquidated Damages:** \$1,000.00

**Seller's Additional Liquidated Damages:** \$1,000.00

**County for Performance:** Hays County, Texas

**A. Deadlines and Other Dates**

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Earnest Money Deadline: Seven days after execution of this contract by both parties.
2. Delivery of Title Commitment: 15 days after the Effective Date
3. As provided in paragraph F.3.
4. Delivery of UCC Search: N/A
5. Delivery of legible copies of instruments referenced in the Title Commitment: 21 days after the Effective Date
6. Delivery of Title Objections: 30 days after delivery of the Title Commitment and Survey and legible copies of the instruments referenced in them
7. Delivery of Seller's Records as specified in Exhibit C: 15 days after the Effective Date
8. End of Inspection Period: 120 days after the Effective Date or such earlier date elected by Buyer by written notice to Seller
9. Closing Date: Within 30 days after the end of the Inspection Period.

**B. Closing Documents**

1. At closing, Seller will deliver the following items:

General Warranty Deed

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Customary closing items as may be requested by the Title Company

2. At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction

Customary closing items as may be requested by the Title Company

The documents listed in this section B are collectively known as the "Closing Documents." Unless otherwise agreed by the parties before closing, the deed will be prepared by Seller's attorney using the forms contained in the current edition of the *Texas Real Estate Forms Manual* (State Bar of Texas). The deed from Seller, however, shall not include any provisions regarding payment of taxes contrary to the provisions in Section K.2.c.

**C. Exhibits**

The following are attached to and are a part of this contract:

Exhibit A— Description of the Property

Exhibit B— Representations; Environmental Matters

Exhibit C— Seller's Records

**D. Purchase and Sale of Property**

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract.

**E. Interest on Earnest Money**

Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any

interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money.

#### **F. Title and Survey**

1. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Property. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

2. *Survey.* "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Buyer, dated after the Effective Date, and certified to Buyer, and any other person specified by Buyer to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category. Buyer shall procure the services of the Surveyor for the Survey at Buyer's sole expense.

3. *Delivery of Title Commitment, Survey, and Legible Copies.* Seller must deliver the Title Commitment to Buyer by the deadline stated in paragraph A.2.; and legible copies of the instruments referenced in the Title Commitment and Survey by the deadline stated in paragraph A.5. Buyer will deliver a copy of the Survey to Seller on or before the end of the Inspection Period.

4. *Title Objections.* Buyer has until the deadline stated in section A.6. ("Title Objection Deadline") to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has five days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

#### **G. Inspection Period**

1. *Review of Seller's Records.* Seller will deliver to Buyer copies of Seller's Records specified in Exhibit C, or otherwise make those records available for Buyer's review, by the

deadline stated in section A.7.

2. *Entry onto the Property.* Buyer may enter the Property before closing to inspect it, subject to the following:

- a. Buyer may not interfere in any material manner with existing operations or occupants of the Property;
- b. Buyer must notify Seller, at least 48 hours in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;
- c. if the Property is altered because of Buyer's inspections, Buyer must, to the extent reasonably practicable, return the Property to its preinspection condition promptly after the alteration occurs, this provision survives termination of the Contract;
- d. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within 15 days after their preparation or receipt; and
- e. Buyer must abide by any other reasonable entry rules imposed by Seller.

3. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period. If Buyer does not notify Seller of Buyer's termination of the contract before the end of the Inspection Period, Buyer waives the right to terminate this contract pursuant to this provision.

## **H. Representations**

The representations stated in Exhibit B are true and correct as of the Effective Date and must be true and correct on the Closing Date.

## **I. Condition of the Property until Closing; Cooperation; No Recording of Contract**

1. *Maintenance and Operation.* Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property. Until the end of the Inspection Period, Seller will not enter into, amend, or terminate any contract that affects the Property other than in the ordinary course of operating the Property and will promptly give notice to Buyer of each new, amended, or terminated contract, including a copy of the contract, in sufficient time so that Buyer may consider the new information before the end of the Inspection Period. If Seller's notice is given within three days before the end of the Inspection Period, the Inspection Period will be extended for three days. After the end of the Inspection Period, Buyer may terminate this contract if Seller enters into, amends, or terminates any contract that affects the Property without first obtaining Buyer's written consent. No demolition or other development

permits for the Property, if any, shall be transferred to any third party.

2. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within fifteen days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen days before closing).

3. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing).

4. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

5. *Cooperation.* Seller will cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer and at Buyer's expense..

6. *No Recording.* Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

## J. Termination

### 1. *Disposition of Earnest Money after Termination*

- a. *To Buyer.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within five days after receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer, less \$2,500.00, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this contract. If, however, Buyer terminates this contract after the end of the Inspection Period for any reason other than as permitted under this contract, the Earnest Money shall be paid to Seller.
- b. *To Seller.* If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer will, within five days after receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Buyer.

2. *Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract and those obligations that survive termination under the express terms of this contract.

## **K. Closing**

1. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Delivery of Originals.* Seller will deliver to Buyer the originals of Seller's Records.
- e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.

### 2. *Transaction Costs*

- a. *Seller's Costs.* Seller will pay the basic charge for the Title Policy; one-half of the escrow fee charged by the Title Company; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by Seller; certificates or reports of ad valorem taxes and Seller's expenses and attorney's fees.
- b. *Buyer's Costs.* Buyer will pay one-half of the escrow fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in

possession; the costs to obtain the Survey; the costs to deliver copies of the instruments described in section A.5; the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by Buyer; the costs of work required by Buyer to have the survey reflect matters other than those required under this contract; the costs to obtain financing of the Purchase Price, including the incremental premium costs of mortgagee's title policies and endorsements and deletions required by Buyer's lender; and Buyer's expenses and attorney's fees.

- c. *Ad Valorem Taxes.* Buyer is a tax-exempt governmental entity and assumes no responsibility for taxes associated with Seller's ownership of the Property through the Closing Date. Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date. Seller's portion of the prorated taxes will be paid to Buyer at closing as an adjustment to the Purchase Price. If the assessment for the calendar year of closing is not known at the Closing Date, the proration will be based on taxes for the previous tax year, and Buyer and Seller will adjust the prorations in cash within thirty days of when the actual assessment and taxes are known. All taxes due as of closing will be paid at closing. After closing, Buyer may forward any tax bills attributable to Seller's ownership of the Property directly to Seller and Seller shall promptly pay such bill. If Buyer pays such bill, it may forward an invoice to Seller for reimbursement and Seller shall promptly pay such invoice. Buyer may pursue any remedies available at law or in equity to enforce the Seller's obligations under this paragraph. Seller's obligations under this paragraph shall survive closing.
- d. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.
- e. *Broker's Commissions.* Buyer will not be responsible for payment of any Broker's Commissions and Seller agrees to indemnify, defend and hold Buyer harmless from any loss, attorney's fees, court costs and other costs arising out of a claim by any person or entity claiming a fee or commission arising from this transaction.

3. *Issuance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

#### **L. Default and Remedies**

1. *Seller's Default.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

- a. *Termination; Liquidated Damages.* Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money, less \$2,500.00 as described above, returned to Buyer. Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, if Seller's Default occurs after Buyer has incurred costs to investigate the Property after the Effective Date and Buyer terminates this contract in accordance with the previous sentence, Seller will also pay to Buyer as liquidated damages the lesser of Buyer's actual out-of-pocket expenses incurred to investigate the Property after the Effective Date or the amount of Buyer's Liquidated Damages, within ten days after Seller's receipt of an invoice from Buyer stating the amount of Buyer's expenses.
- b. *Specific Performance.* Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this contract, but any such action must be initiated, if at all, within ninety days after the breach or alleged breach of this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

2. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may elect either of the following as its sole and exclusive remedy:

- a. *Termination; Liquidated Damages.* Seller may terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this contract and Seller terminates this contract in accordance with the previous sentence, Buyer will also reimburse Seller for the lesser of Seller's actual out-of-pocket expenses incurred to perform its obligations under this contract or the amount of Seller's Additional Liquidated Damages, within ten days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses.
- b. *Specific Performance.* Seller may enforce specific performance of Buyer's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

3. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that Buyer's Liquidated Damages or the Earnest Money and Seller's Additional Liquidated Damages are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

4. *Attorney's Fees.* If either party retains an attorney to enforce this contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

**M. Miscellaneous Provisions**

1. *Notices.* Any notice required by or permitted under this contract must be in writing. Any notice required by this contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. *Entire Contract.* This contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this contract.

3. *Amendment.* This contract may be amended only by an instrument in writing signed by the parties.

4. *Assignment.* Buyer may assign this contract only with the consent of Seller.

5. *Survival.* The obligations of this contract that cannot be performed before termination of this contract or before closing will survive termination of this contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

6. *Choice of Law; Venue; Alternative Dispute Resolution.* This contract will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for any dispute arising under this agreement shall be in the appropriate state court in Hays County, Texas having jurisdiction. Time permitting, the parties will submit in good faith to an alternative dispute resolution process before filing a suit concerning this contract.

7. *Waiver of Default.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this contract.

9. *Severability.* The provisions of this contract are severable. If a court of competent jurisdiction finds that any provision of this contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. *Counterparts.* If this contract is executed in multiple counterparts, all counterparts taken together will constitute this contract.

13. *Confidentiality.* The parties will keep confidential all information learned in the course of this transaction, except to the extent disclosure is required by the Texas Public Information Act, the Texas Open Meetings Act, other law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

14. *No Waiver of Immunity.* The parties agree that this contract is not a contract for goods or services and neither party waives any immunity from suit or liability of limitations on liability granted under applicable laws and constitution of the State of Texas.

15. *Subject to Approval.* This contract is subject to a) the approval of the San Marcos City Council; and b) the appropriation of lawfully available funds for payment of the Purchase Price and all of Buyer's Closing Costs by the San Marcos City Council. If no such approval is obtained and appropriation made within the Inspection Period, Seller shall have no recourse against Buyer for such reasons and this contract shall be of no further force and effect.

[SIGNATURES ON NEXT PAGE]

**SELLER:**

DocuSigned by:  
  
Patricia Murphy  
Patricia B. Murphy

Date: 1/10/2020

DocuSigned by:  
  
Mary Black  
Mary O. Black

Date: 1/10/2020

**BUYER:**

By: 

Name: Bert Humbrengas

Title: City Manager

Date: January 10, 2020



## Exhibit B

### Representations; Environmental Matters

#### A. Seller's Representations

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* This contract is, and all documents required by this contract to be executed and delivered by each party at closing will be duly authorized, executed, and delivered by such party.

2. *Litigation.* There is no litigation pending or threatened against either party that might affect the Property or either party's ability to perform its obligations under this contract.

3. *Violation of Laws.* Neither party has received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or use of the Property.

4. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller agrees to provide any environmental, hazardous materials and other such reports or disclosures in its possession to Buyer within the deadline for providing Seller's Records. Other than such information, if any, Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

5. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

6. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.

7. *No Other Representation.* Except as stated above or in this Agreement Seller makes no other representation with respect to the Property.

8. *No Warranty.* Seller has made no warranty in connection with this contract.

**Exhibit C  
Seller's Records**

To the extent that Seller has possession of the following items pertaining to the Property, Seller will deliver or make the items or copies of them available to Buyer by the deadline stated in section A.7.:

**Governmental**

governmental licenses, certificates, permits, and approvals

tax statements for the current year and the last three years

notices of appraised value for the current year and the last three years

records of regulatory proceedings or violations (for example, condemnation, environmental)

**Land**

soil reports

environmental reports

water rights

engineering reports

prior surveys

site plans

**Facilities**

as-built plans, specifications, and mechanical drawings for improvements

engineering reports

environmental reports

operating and maintenance plans (for example, asbestos maintenance plans)

**Leases**

Leases

commission and leasing agent agreements

rent roll setting forth for each Lease:

tenant's name

square footage leased

date of expiration of current and renewal terms

renewal options

options to purchase any portion of the Property

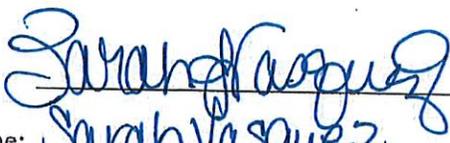
rights of first refusal to lease other space

estoppel letters and/or subordination agreements

### TITLE COMPANY RECEIPT

Title Company acknowledges receipt of Earnest Money in the amount of \$10,000.00 and a copy of this contract executed by both Buyer and Seller.

**San Marcos Title Company**

By: 

Name: Sarah Vasquez

Date: 1/10/2020

| INVOICE DATE | INVOICE NUMBER | DESCRIPTION                               | INVOICE AMOUNT |
|--------------|----------------|---|----------------|
| 01/10/2020   | EARNEST-011020 | EARNEST MONEY 3152 SOUTH GUADALUPE STREET | \$10,000.00    |

SY11857

VerbusBusinessForms.com 877.749.2090

FORM # PSC08X

| VENDOR NO | VENDOR NAME              | CHECK NO | CHECK DATE | CHECK AMOUNT |
|-----------|--------------------------|----------|------------|--------------|
| 207476    | SAN MARCOS TITLE COMPANY | 57983    | 01/10/2020 | \$10,000.00  |



**City of San Marcos**  
**ACCOUNTS PAYABLE**  
 630 E Hopkins  
 San Marcos, TX 78666  
 Ph. (512) 393-8170

Wells Fargo, N.A.  
 123 N. Edward Gary St  
 San Marcos, TX

37-65  
 1118

Vendor Number    Check Number    Check Date  
 207476            57983            01/10/2020

VOID 90 DAYS FROM DATE OF ISSUE

\$10,000.00

Pay \*\*\*Ten Thousand Dollars and 00 Cents\*\*\*

To the Order Of  
**SAN MARCOS TITLE COMPANY**  
**100 E SAN ANTONIO ST**  
**SUITE 101**  
**SAN MARCOS, TX 78666-0000**

*[Signature]* MP  
 Authorized Signature  
*[Signature]* MP  
 Authorized Signature

00057983 1111900659 2399110200

**AMENDMENT TO REAL ESTATE SALES CONTRACT  
TO EXTEND INSPECTION PERIOD**

This Amendment to Real Estate Sales Contract to Extend Inspection Period is entered into by and between the City of San Marcos, Texas ("Buyer") and Patricia R. Murphy and Mary O. Black ("Seller"). Buyer and Seller may also be referred to herein as the "Parties."

**I. RECITALS**

1.1. The Parties entered into a Real Estate Sales Contract for the sale of Lot 1, Block 12, Original Town of San Marcos, commonly known as 152 South Guadalupe Street, San Marcos, Texas 78666 (the "Contract"). Under Section G of the Contract, Buyer is granted an Inspection Period. Section A.8 of the Contract provides for the duration for the Inspection Period.

1.2. During the original Inspection Period, an environmental site assessment and testing were conducted on the Property. The testing revealed the presence of certain hazardous or toxic chemicals and the Parties seek to enable further testing regarding such chemicals.

1.3. In addition, the Parties wish to coordinate with each other to enroll the Property into the Texas Commission of Environmental Quality Voluntary Cleanup Program under mutually agreed terms and conditions for the sale of the Property yet to be negotiated by the Parties.

1.4. An extension of the Inspection Period is necessary: a) provide more time for additional testing on the Property to be completed and the results of such testing to be analyzed; and b) for the Parties to negotiate revised or supplemental terms and conditions for the sale of the Property under the Contract in light of the above circumstances.

1.5. For these reasons, the Parties wish to extend the duration of the Inspection Period as provided below.

**II. AGREEMENT**

1. In consideration of the mutual benefits to the Parties herein, the Parties agree that the Contract is hereby amended as follows: The End of Inspection Period under Section A.8 of the Contract is hereby extended to August 29, 2020.

2. All other terms and conditions set forth in the Contract shall remain in full force and effect, except as further amended by mutual agreement of the Parties in writing.

EXECUTED to be effective as of the date of the last signatures of Buyer and Seller below.

SIGNATURES ON NEXT PAGE

**BUYER:**

By: Chase Stapp

Name: [Signature]

Title: Director of Public Safety

Date: 5-7-20

**SELLER:**

Patricia R. Murphy  
Patricia R. Murphy

Date: May 7, 2020

Mary O. Black  
Mary O. Black

Date: May 7, 2020

**TITLE COMPANY RECEIPT**

Title Company acknowledges receipt of this Amendment to Real Estate Sales Contract to Extend Inspection Period

**San Marcos Title Company:**

By: San Marcos Title Co

Name: Sarah Gasquez

Date: 5/7/2020  
SR



## Legislation Text

---

**File #:** Res. 2020-224R, **Version:** 1

---

**AGENDA CAPTION:**

Consider approval of Resolution 2020-224R, approving the Alliance Regional Water Authority (ARWA) Issuing Contract Revenue Bonds for the City of San Marcos in the aggregate principal amount of \$43,955,000.00 including approval of the Bond Resolution and other related matters in accordance with the Regional Water Supply Contract; authorizing the City Manager or his designee to execute any necessary related documents; and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** Public Services - Water/Wastewater - Tom Taggart, Director

**Amount & Source of Funding**

**Funds Required:** [Click or tap here to enter text.](#)

**Account Number:** [Click or tap here to enter text.](#)

**Funds Available:** [Click or tap here to enter text.](#)

**Account Name:** [Click or tap here to enter text.](#)

**Fiscal Note:**

**Prior Council Action:** Council approval in 2008 for ARWA project participation

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Sustainability

[Choose an item.](#)

[Choose an item.](#)

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

Economic Development - [Choose an item.](#)

Environment & Resource Protection - [Choose an item.](#)

Land Use - [Choose an item.](#)

Neighborhoods & Housing - [Choose an item.](#)

Parks, Public Spaces & Facilities - [Choose an item.](#)

Transportation - [Choose an item.](#)

- Core Services  
 Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Water Master Plan

**Background Information:**

The City approved and executed the Regional Water Supply Contract effective January 15, 2008 for the financing, construction and operation of the Regional Water Supply Project. The City has previously requested the ARWA issue a separate series of contract revenue bonds for the City in an amount not to exceed \$43,955,000 to finance the City's contribution to the design, construction and equipment of the Phase 1B Improvements of the Regional Water Supply contract. This resolution is presented for City Council consideration and approval for the ARWA Board of Directors to approve a resolution authorizing the Bonds for the City's share of the Phase 1B improvements of the Water Supply Project.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends approving the resolution.

**RESOLUTION NO. 2020-224R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING THE ALLIANCE REGIONAL WATER AUTHORITY (ARWA) ISSUING CONTRACT REVENUE BONDS FOR THE CITY OF SAN MARCOS IN THE AGGREGATE PRINCIPAL AMOUNT OF \$43,955,000.00 INCLUDING APPROVAL OF THE BOND RESOLUTION AND OTHER RELATED MATTERS IN ACCORDANCE WITH THE REGIONAL WATER SUPPLY CONTRACT; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY NECESSARY DOCUMENTS RELATED TO THE BOND ISSUANCE; AND DECLARING AN EFFECTIVE DATE.**

**CITY OF SAN MARCOS §**  
**COUNTIES OF HAYS, CALDWELL AND GUADALUPE §**  
**STATE OF TEXAS §**

**WHEREAS**, the City of San Marcos, Texas (the "City") is a sponsor of the Alliance Regional Water Authority (the "Authority"); and

**WHEREAS**, the City has approved and executed the Regional Water Supply Contract dated and effective January 15, 2008 for the financing, construction and operation of the Authority Regional Water Supply Project as amended by the First Amendment to the Contract (collectively, the "Contract"); and

**WHEREAS**, any capitalized terms not otherwise defined herein shall have the meaning given in the Contract; and

**WHEREAS**, the City has previously requested the Authority issue a separate series of contract revenue bonds for the City in an amount not to exceed \$43,955,000 entitled "Alliance Regional Water Authority Contract Revenue Bonds (Regional Water Supply Contract Project – City of San Marcos, Texas), Series 2020C" (the "Bonds") to finance the City's contribution to the design, construction and equipment of the Phase 1B Improvements of the Authority Water Supply Project pursuant to the Contract which Bonds are payable from the Bond Payments to be made to the Authority under and pursuant to the Contract; and

**WHEREAS**, pursuant to Section 3.1(c) of the Contract, prior to adoption of a bond resolution for the City by the Authority's Board of Directors, a substantially final copy of the Bond Resolution for the City and the sale and offering documents, if any, shall be presented to the City for review and approval; and

**WHEREAS**, a substantially final copy of the Authority's Bond Resolution, both as defined in the Contract, authorizing the Bonds for the City's share of the Phase 1B Improvements of the Authority Water Supply Project has been presented to the City for review and approval; and

**WHEREAS**, the Bonds are being sold to the Texas Water Development Board and there are no sale and offering documents, as defined in the Contract, to be presented to the City for review and approval; however, a private placement memorandum has been submitted to the City for review and approval; and

**WHEREAS**, it is hereby further officially found and determined that public notice of the time, place, and purpose of this meeting was given, all as required by Texas Government Code, Chapter 551.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**SECTION 1. RECITALS.** The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section. Capitalized terms used herein shall have the meaning assigned in the preamble hereof or the Contract, unless otherwise defined.

**SECTION 2. BOND RESOLUTION.** The City Council hereby approves the Authority issuing contract revenue bonds for the City in the aggregate principal amount of \$43,955,000 including approval of the Bonds Resolution and other related matters in accordance with the Contract. The Bond Resolution in substantially the form attached hereto as Exhibit "A" is hereby approved with such changes as approved by the City's Authorized Representative.

**SECTION 3. CERTIFICATES.** The City's Authorized Representative is hereby authorized to sign the Approval Certificate attached hereto as Exhibit "B" reflecting the final interest rates and terms of the Bonds. The Mayor, City Clerk, City Manager and Assistant City Manager are each authorized to sign all certificates and are hereby authorized and directed to do any and all things necessary and/or convenient to carry out the terms of this Resolution and the issuance of the Bonds as requested by the City.

**SECTION 4. ANNUAL AUDIT.** Within 180 days after the City's fiscal year end, the City shall provide the Authority a copy of its annual audit.

**SECTION 5. IMMEDIATE EFFECT.** This Resolution shall take effect immediately from and after its adoption in accordance with the law.

**PASSED AND APPROVED** this October 20, 2020.

---

Mayor  
City of San Marcos, Texas

**ATTEST:**

---

City Clerk

**EXHIBIT "A"**

**BOND RESOLUTION**

[See Separate Tab]

**EXHIBIT "B"**

**APPROVAL CERTIFICATE**

The undersigned Authorized Representative of the City of San Marcos, Texas pursuant to the resolution (the "Resolution") authorizing the issuance of obligations designated as "Alliance Regional Water Authority Contract Revenue Bonds (Regional Water Supply Contract Project – City of San Marcos, Texas), Series 2020C" (the "Bonds") hereby approves the following terms of the Bonds:

- (i) the total principal amount of the Bonds of \$43,955,000;
- (ii) the purchase price for the Bonds is \$43,955,000 (representing the original principal amount of the Bonds);
- (iii) the interest rates and maturity schedule for the Bonds are as set forth below:

| <u>YEAR OF<br/>STATED<br/>MATURITY</u><br><u>(August 15)</u> | <u>PRINCIPAL<br/>AMOUNTS(\$)</u> | <u>INTEREST<br/>RATES(%)</u> | <u>YEAR OF<br/>STATED<br/>MATURITY</u><br><u>(August 15)</u> | <u>PRINCIPAL<br/>AMOUNTS(\$)</u> | <u>INTEREST<br/>RATES(%)</u> |
|--|----------------------------------|------------------------------|--|----------------------------------|------------------------------|
| 2022   | \$ 2,190,000                     | 0.120%                       | 2032   | \$ 2,285,000                     | 1.080%                       |
| 2023   | 2,190,000                        | 0.140                        | 2033   | 2,310,000                        | 1.230                        |
| 2024   | 2,195,000                        | 0.190                        | 2034   | 2,340,000                        | 1.290                        |
| 2025   | 2,200,000                        | 0.230                        | 2035   | 2,375,000                        | 1.360                        |
| 2026   | 2,210,000                        | 0.330                        | 2036   | 2,410,000                        | 1.410                        |
| 2027   | 2,215,000                        | 0.440                        | 2037   | 2,450,000                        | 1.450                        |
| 2028   | 2,225,000                        | 0.520                        | 2038   | 2,490,000                        | 1.490                        |
| 2029   | 2,235,000                        | 0.620                        | 2039   | 2,535,000                        | 1.520                        |
| 2030   | 2,250,000                        | 0.690                        | 2040   | 2,585,000                        | 1.550                        |
| 2031   | 2,265,000                        | 0.910                        |  |                                  |                              |

- (iv) the Bonds are subject to redemption as set forth below:

The Bonds stated to mature on and after August 15, 2031 may be redeemed prior to their Stated Maturities, at the option of the Authority, in inverse order of maturity on February 15, 2031, or on any date thereafter, in whole or in part in an Authorized Denomination (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar) at the redemption price of par, together with accrued interest to the date of redemption, and upon thirty (30) days prior written notice being given by United States mail, first-class postage prepaid, to Holders of the Bonds to be redeemed, and subject to the terms and provisions relating thereto contained in the Resolution. If this Bond is subject to redemption prior to Stated Maturity and in an Authorized Denomination thereof may be redeemed, and, if less than all of the principal sum hereof is to be redeemed, there shall be issued, without charge therefor, to the Holder hereof, upon the surrender of this Bond to the Paying Agent/Registrar at its corporate trust office, a new Bond or

Bonds of like Stated Maturity and interest rate in any authorized denominations provided in the Resolution for the then unredeemed balance of the principal sum hereof.

If this Bond (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Bond (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and, if money for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption is held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable hereon from and after the redemption date on the principal amount hereof to be redeemed. If this Bond is called for redemption, in whole or in part, the Authority or the Paying Agent/Registrar shall not be required to issue, transfer, or exchange this Bond within forty-five (45) days of the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance hereof in the event of its redemption in part; and

(v) the Bonds have been approved for issuance by the Texas Water Development Board and will be approved by the Texas Attorney General.

**EXECUTED AND DELIVERED THIS** 20th day of October, 2020.

**CITY OF SAN MARCOS, TEXAS**

\_\_\_\_\_  
Title: \_\_\_\_\_

**RESOLUTION NO. 2020-10-28-\_\_\_\_\_**

**A RESOLUTION BY THE BOARD OF DIRECTORS OF THE ALLIANCE REGIONAL WATER AUTHORITY AUTHORIZING THE ISSUANCE OF ALLIANCE REGIONAL WATER AUTHORITY CONTRACT REVENUE BONDS (REGIONAL WATER SUPPLY CONTRACT PROJECT – CITY OF SAN MARCOS, TEXAS), SERIES 2020C; AND RESOLVING OTHER MATTERS INCIDENT AND RELATING TO THE ISSUANCE, PAYMENT, SECURITY, SALE AND DELIVERY OF SUCH BONDS**

**ADOPTED OCTOBER 28, 2020**

**RESOLUTION NO. RESOLUTION NO. 2020-10-28-\_\_\_\_\_**

**A RESOLUTION BY THE BOARD OF DIRECTORS OF THE ALLIANCE REGIONAL WATER AUTHORITY AUTHORIZING THE ISSUANCE OF ALLIANCE REGIONAL WATER AUTHORITY CONTRACT REVENUE BONDS (REGIONAL WATER SUPPLY CONTRACT PROJECT – CITY OF SAN MARCOS, TEXAS), SERIES 2020C; AND RESOLVING OTHER MATTERS INCIDENT AND RELATING TO THE ISSUANCE, PAYMENT, SECURITY, SALE, AND DELIVERY OF SUCH BONDS**

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**RESOLUTION NO. RESOLUTION NO. 2020-\_\_\_-\_\_\_-\_\_\_**

**A RESOLUTION BY THE BOARD OF DIRECTORS OF THE ALLIANCE REGIONAL WATER AUTHORITY AUTHORIZING THE ISSUANCE OF ALLIANCE REGIONAL WATER AUTHORITY CONTRACT REVENUE BONDS (REGIONAL WATER SUPPLY CONTRACT PROJECT – CITY OF SAN MARCOS, TEXAS), SERIES 2020C; AND RESOLVING OTHER MATTERS INCIDENT AND RELATING TO THE ISSUANCE, PAYMENT, SECURITY, SALE, AND DELIVERY OF SUCH BONDS**

**WHEREAS**, pursuant to Chapter 572, as amended, Texas Local Government Code, the Hays Caldwell Public Utility Agency (the "Agency") as a constituted authority and instrumentality and political subdivision of the State of Texas (the "State"), was created by the Cities of Buda ("Buda"), San Marcos ("San Marcos") and Kyle, Texas ("Kyle"), each Texas home rule municipalities, and the Canyon Regional Water Authority ("Canyon Regional"), a conservation and reclamation district and political subdivision of the State created and existing pursuant to Article XVI, Section 59 of the Texas Constitution and Chapter 670, Acts of the 71<sup>st</sup> Legislature, Regular Session, 1989, as amended (collectively, the "Sponsors" or singularly, a "Sponsor"); and

**WHEREAS**, the Agency and the Sponsors have entered into a "Regional Water Supply Contract" dated as of January 15, 2008, as amended by Amendment No. 1 and as may be further amended (collectively, the "Contract") pursuant to which the Agency has agreed to design, finance, construct, own, acquire, maintain and operate a water supply project in a manner that will allow the Agency to deliver water to the Sponsors on a regional basis and under which each of the Sponsors agree to pay their share of the project costs and to make payments to or on behalf of the Agency in amounts sufficient to meet all of the Agency's obligations under the Contract including those relating to a Sponsor's bonds issued to finance and refinance a Sponsor's share of the Project Costs and to own, operate and maintain the Project; and

**WHEREAS**, at the request of Canyon Regional and Kyle, the Agency issued two series of bonds on November 19, 2015 for such Sponsors share of the Phase 1A Project entitled: \$3,960,000 Hays Caldwell Public Utility Agency Contract Revenue Bonds (Regional Water Supply Contract Project – Canyon Regional Water Authority), Series 2015A and \$3,530,000 Hays Caldwell Public Utility Agency Contract Revenue Bonds (Regional Water Supply Contract Project – City of Kyle, Texas), Series 2015B (collectively, the "Outstanding Bonds"); and

**WHEREAS**, on June 15, 2017, by special act of the 85<sup>th</sup> Legislature, SB 1198 (the "Act") the Agency was converted to the Alliance Regional Water Authority (the "Authority"), a conservation and reclamation district to accomplish the purposes set forth in the Act and of Article XVI, Section 59, Texas Constitution; and

**WHEREAS**, by operation of the law pursuant to the Act, the Authority assumed all assets, liabilities, bonds, notes and other obligations of the Agency including all obligations pursuant to the Outstanding Bonds and the Contract; and

**WHEREAS**, at the request of the Sponsors the Authority issued eight series of bonds, one for each of the Sponsors' share of the Project Costs, to wit: \$9,865,000 Alliance Regional Water Authority Contract Revenue Bonds, (Regional Water Supply Contract Project – Canyon Regional Water Authority), Series 2017A, \$8,995,000 Alliance Regional Water Authority Contract Revenue Bonds, (Regional Water Supply Contract Project – City of Kyle, Texas), Series 2017B, \$11,450,000 Alliance Regional Water Authority Contract Revenue Bonds (Regional Water Supply Contract Project – City of San Marcos, Texas), Series 2017C, \$1,625,000 Alliance Regional Water Authority Contract Revenue Bonds, (Regional Water Supply Contract Project – City of Buda, Texas), Series 2017D, \$26,530,000 Alliance Regional Water Authority Contract Revenue Bonds, (Regional Water Supply Contract Project – Canyon Regional Water Authority), Series 2019A, \$24,200,000 Alliance Regional Water Authority Contract Revenue Bonds, (Regional Water Supply Contract Project – City of Kyle, Texas), Series 2019B, \$30,800,000 Alliance Regional Water Authority Contract Revenue Bonds (Regional Water Supply Contract Project – City of San Marcos, Texas), Series 2019C and \$4,370,000 Alliance Regional Water Authority Contract Revenue Bonds, (Regional Water Supply Contract Project – City of Buda, Texas), Series 2019D; and

**WHEREAS**, pursuant to the Act, the Authority is empowered to, among other powers, acquire, own, construct, operate, repair, improve, maintain or extend inside or outside its boundaries water improvements, facilities, plants, pipelines, equipment and appliances for the treatment and transportation of water and to deliver this water to the Sponsors; and

**WHEREAS**, the Act also authorizes the Authority acting through its Board of Directors (the "Board") to issue revenue bonds to finance such water projects, payable solely from the revenues derived from payments to be made to the Authority by one or more of the respective Sponsors for which a series of bonds are issued for the purpose of defraying such Sponsor's share of the cost of financing, acquiring, and constructing water supply facilities including the Phase 1B Improvements Water Supply Project (as hereinafter defined); and

**WHEREAS**, the Authority expects to issue four additional series of such revenue bonds in 2020 for Canyon Regional, Kyle, San Marcos and Buda, respectively, to finance their additional share of the Phase 1B Improvements Project costs, with each series payable from and secured solely by payments made by Canyon Regional, Kyle, San Marcos and Buda, respectively, under the Contract; and

**WHEREAS**, San Marcos has requested that the Authority issue a separate series of revenue bonds in the aggregate principal amount of \$43,955,000 pursuant to the Contract to finance their share of the Phase 1B Improvements Water Supply Project Costs (the "Bonds"); and

**WHEREAS**, this Resolution constitutes a Bond Resolution as that term is defined in the Contract; and

**WHEREAS**, the principal of the Bonds and the interest thereon are and shall be solely payable from and secured by a lien on and pledge of the portion of the Annual Payments designated as "Bond Payments" to be made by San Marcos pursuant to the Contract in amounts sufficient to pay and redeem, and provide for the payment of the principal of, premium, if any, and interest on the Bonds, when due, and the fees and expenses of the Paying Agent/Registrar and Escrow Agent for the Bonds, all as required by this Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ALLIANCE REGIONAL WATER AUTHORITY THAT:**

**Section 1. DEFINITIONS.** In addition to the definitions set forth in the preamble of this Resolution, the terms used in this Resolution (except as may be otherwise indicated in the FORM OF BOND) and not otherwise defined herein shall have the meanings given in Exhibit "A" to this Resolution attached hereto and made a part hereof.

**Section 2. AMOUNT, PURPOSE AND DESIGNATION OF THE BONDS.** (a) *Amount and Designation.* The Authority's Bonds issued pursuant to this Resolution shall be entitled "ALLIANCE REGIONAL WATER AUTHORITY CONTRACT REVENUE BONDS (Regional Water Supply Project – City of San Marcos, Texas), Series 2020C" and are hereby authorized to be issued in the aggregate principal amount of \$43,955,000.

(b) *Purpose.* The Bonds are to be issued for the following purposes: (i) FOR DESIGNING, CONSTRUCTING, ACQUIRING, IMPROVING AND/OR EXPANDING THE PROJECT INCLUDING BUT NOT LIMITED TO THE PAYMENT OF PROJECT COSTS FOR THE PHASE 1B IMPROVEMENTS WATER SUPPLY PROJECT AND (ii) PAYING THE COSTS OF ISSUANCE OF THE BONDS.

**Section 3. DATE, DENOMINATIONS, NUMBERS, MATURITIES AND TERMS OF BONDS.** (a) *Terms of Bonds.* The Bonds shall initially be issued, sold, and delivered hereunder as fully registered bonds, without interest coupons, numbered consecutively from R-1 upward (except the initial Bond delivered to the Attorney General of the State which shall be numbered T-1), dated the date of delivery, payable to the respective initial Registered Owners thereof in an Authorized Denomination, serially on August 15, in the years and in the principal amounts set forth below:

| <u>YEAR</u><br><u>OF STATED</u><br><u>MATURITY</u> | <u>PRINCIPAL</u><br><u>AMOUNTS (\$)</u> | <u>YEAR</u><br><u>OF STATED</u><br><u>MATURITY</u> | <u>PRINCIPAL</u><br><u>AMOUNTS (\$)</u> |
|--|---|--|---|
| 2022   | \$ 2,190,000                            | 2032   | \$ 2,285,000                            |
| 2023   | 2,190,000                               | 2033   | 2,310,000                               |
| 2024   | 2,195,000                               | 2034   | 2,340,000                               |
| 2025   | 2,200,000                               | 2035   | 2,375,000                               |
| 2026   | 2,210,000                               | 2036   | 2,410,000                               |
| 2027   | 2,215,000                               | 2037   | 2,450,000                               |
| 2028   | 2,225,000                               | 2038   | 2,490,000                               |
| 2029   | 2,235,000                               | 2039   | 2,535,000                               |
| 2030   | 2,250,000                               | 2040   | 2,585,000                               |
| 2031   | 2,265,000                               |  |   |

(b) *In General.* The Bonds (i) may and shall be redeemed prior to the respective scheduled maturity dates, (ii) may be assigned and transferred, (iii) may be exchanged for other Bonds, (iv) shall have the characteristics, (v) shall be signed, and the principal of and interest on the

Bonds shall be payable, all as provided, and in the manner required or indicated, in the FORM OF BOND set forth in Exhibit "B" to this Resolution.

**Section 4. INTEREST.** The Bonds shall bear interest, calculated on the basis of a 360- day year composed of twelve 30-day months, from their date of delivery at the rates set forth below:

| <u>YEAR</u><br><u>OF STATED</u><br><u>MATURITY</u> | <u>INTEREST</u><br><u>RATES (%)</u> | <u>YEAR</u><br><u>OF STATED</u><br><u>MATURITY</u> | <u>INTEREST</u><br><u>RATES (%)</u> |
|--|-------------------------------------|--|-------------------------------------|
| 2022   | 0.120%                              | 2032   | 1.080%                              |
| 2023   | 0.140                               | 2033   | 1.230                               |
| 2024   | 0.190                               | 2034   | 1.290                               |
| 2025   | 0.230                               | 2035   | 1.360                               |
| 2026   | 0.330                               | 2036   | 1.410                               |
| 2027   | 0.440                               | 2037   | 1.450                               |
| 2028   | 0.520                               | 2038   | 1.490                               |
| 2029   | 0.620                               | 2039   | 1.520                               |
| 2030   | 0.690                               | 2040   | 1.550                               |
| 2031   | 0.910                               |  |                                     |

Interest shall be payable to the Registered Owner of any such Bond in the manner provided and on the dates stated in the FORM OF BOND set forth in Exhibit "B" to this Resolution.

**Section 5. REGISTRATION, TRANSFER, AND EXCHANGE; AUTHENTICATION.**

(a) ***Paying Agent/Registrar.*** BOKF, NA is hereby appointed the Paying Agent/Registrar for the Bonds. The Authority Representative is authorized to enter into and carry out a Paying Agent/Registrar Agreement with the Paying Agent/Registrar with respect to the Bonds in substantially the form and substance presented to the Board in connection with the approval of this Resolution with such changes as are acceptable to the Authority Representative.

(b) ***Registration Books.*** The Board shall keep or cause to be kept at a designated corporate trust office of the Paying Agent/Registrar in Dallas, Texas (the "Designated Trust Office") the Registration Books and the Board hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers, exchanges, and replacements under such reasonable regulations as the Board and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, exchanges, and replacements as herein provided. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the Registered Owner of each Bond to which payments with respect to the Bonds shall be mailed, as herein provided; but it shall be the duty of each Registered Owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The Board shall have the right to inspect the Registration Books at the Designated Trust Office of the Paying Agent/Registrar during regular business hours, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. A copy of the Registration Books shall be maintained in the State.

(c) **Ownership of Bonds.** The entity or person in whose name any Bond shall be registered in the Registration Books at any time shall be deemed and treated as the absolute owner thereof for all purposes of this Resolution, whether or not such Bond shall be overdue, and, to the extent permitted by law, the Board and the Paying Agent/Registrar shall not be affected by any notice to the contrary; and payment of, or on account of, the principal of, premium, if any, and interest on any such Bond shall be made only to such Registered Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(d) **Payment of Bonds and Interest.** The Paying Agent/Registrar shall further act as the paying agent for paying the principal of, premium, if any, and interest on the Bonds, all as provided in this Resolution. The Paying Agent/ Registrar shall keep proper records of all payments made by the Board and the Paying Agent/Registrar with respect to the Bonds. So long as the Purchaser owns the Bonds, the Paying Agent/Registrar shall provide a copy to the Purchaser and its designated trustee of all receipts documenting debt service payments.

(e) **Authentication.** The Bonds initially issued and delivered pursuant to this Resolution shall be authenticated by the Paying Agent/Registrar by execution of the Paying Agent/Registrar's Authentication Certificate unless they have been approved by the Attorney General of the State and registered by the Comptroller of Public Accounts of the State, and on each substitute Bond issued in exchange for any Bond or Bonds issued under this Resolution the Paying Agent/Registrar shall execute the Paying Agent/Registrar's Authentication Certificate (the "Authentication Certificate"). The Authentication Certificate shall be in the form set forth in the FORM OF BOND in Exhibit "B" attached hereto.

(f) **Transfer, Exchange, or Replacement.** Each Bond issued and delivered pursuant to this Resolution, to the extent of the unpaid or unredeemed principal amount thereof, may, upon surrender of such Bond at the Designated Trust Office of the Paying Agent/Registrar, together with a written request therefor duly executed by the Registered Owner or the assignee or assignees thereof, or its or their duly authorized attorneys or representatives, with guarantee of signatures satisfactory to the Paying Agent/Registrar, may, at the option of the Registered Owner or such assignee or assignees, as appropriate, be exchanged for fully registered Bonds, without interest coupons, in the appropriate form prescribed in the FORM OF BOND set forth in Exhibit "B" to this Resolution, in any Authorized Denomination (subject to the requirement hereinafter stated that each substitute Bond shall be of the same Series and have a single stated maturity date), as requested in writing by such Registered Owner or such assignee or assignees, in an aggregate principal amount equal to the unpaid or unredeemed principal amount of any Bond or Bonds so surrendered, and payable to the appropriate Registered Owner, assignee, or assignees, as the case may be. If a portion of any Bond shall be redeemed prior to its scheduled maturity as provided herein, a substitute Bond or Bonds having the same Series designation and maturity date, bearing interest at the same rate, and payable in the same manner, in Authorized Denominations at the request of the Registered Owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the Registered Owner upon surrender thereof for cancellation. If any Bond or portion thereof is assigned and transferred, each Bond issued in exchange therefor shall have the same Series designation and maturity date and bear interest at the same rate and payable in the same manner as the Bond for which it is being exchanged. Each substitute Bond shall bear a letter and/or number to distinguish it from each other Bond. The Paying Agent/Registrar shall exchange

or replace Bonds as provided herein, and each fully registered Bond delivered in exchange for or replacement of any Bond or portion thereof as permitted or required by any provision of this Resolution shall constitute one of the Bonds for all purposes of this Resolution, and may again be exchanged or replaced. On each substitute Bond issued in exchange for or replacement of any Bond or Bonds issued under this Resolution there shall be printed an Authentication Certificate, in the form set forth in Exhibit "B" to this Resolution. An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Bond, date and manually sign the Authentication Certificate, and, except as provided in (e) above, no such Bond shall be deemed to be issued or outstanding unless the Authentication Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all Bonds surrendered for transfer, exchange, or replacement. No additional orders or resolutions need be passed or adopted by the Board or any other body or person so as to accomplish the foregoing transfer, exchange, or replacement of any Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Bonds in the manner prescribed herein, and said Bonds shall be in typed or printed form as determined by the Authority Representative. Pursuant to Subtitle D, Texas Government Code and particularly Section 1201.063, thereof, the duty of transfer, exchange, or replacement of Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the Authentication Certificate, the exchanged or replaced Bond shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Bonds which were originally issued pursuant to this Resolution. The Board shall pay the Paying Agent/Registrar's standard or customary fees and charges, if any, for transferring, and exchanging any Bond or any portion thereof, but the one requesting any such transfer and exchange shall pay any taxes or governmental charges required to be paid with respect thereto as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer, exchange, or replacement of Bonds or any portion thereof (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following interest payment date, or (ii) with respect to any Bond or portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date. To the extent possible, any new Bond issued in an exchange, replacement, or transfer of a Bond will be delivered to the Registered Owner or assignee of the Registered Owner not more than three business days after the receipt of the Bonds to be canceled and the written request as described above.

(g) ***Substitute Paying Agent/Registrar.*** The Board covenants with the Registered Owners of the Bonds that at all times while the Bonds are outstanding the Board will provide a competent and legally qualified bank, trust company, financial institution, or other Authority to act as and perform the services of Paying Agent/Registrar for the Bonds under this Resolution, and that the Paying Agent/Registrar will be one entity. The Board reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than ninety (90) days written notice to the Paying Agent/Registrar, to be effective not later than sixty (60) days prior to the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the Board covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other Authority to act as Paying Agent/Registrar under this Resolution. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Bonds, to the new Paying Agent/Registrar designated and appointed by the Board. Upon any change in the Paying

Agent/Registrar, the Board promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each Registered Owner of the Bonds, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Resolution, and a certified copy of this Resolution shall be delivered to each Paying Agent/Registrar.

(h) **Notice of Redemption.** Each notice of redemption required in the FORM OF BOND shall contain a description of the Bonds to be redeemed including the complete name of the Bonds, the Series, the date of issue, the interest rate or rates, the maturity date, the CUSIP number, a reference to the certificate numbers and the amounts called of each certificate, the publication and mailing date for the notice, the date of redemption, the redemption price, the name of the Paying Agent/Registrar and the address at which the Bonds may be redeemed, including a contact person and telephone number. All redemption payments made by the Paying Agent/Registrar to the registered owners of the Bonds shall include a CUSIP number relating to each amount paid to such Registered Owner.

(i) **Book-Entry-Only System.** The Bonds issued in exchange for the Bonds initially issued as provided in Section 5(l) shall be issued in the form of a separate single fully registered Bond for each of the maturities thereof registered in the name of Cede & Co. as nominee of DTC and except as provided in subsection (f) hereof, all of the Outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the Authority and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC participants (the "DTC Participant") or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the Authority and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC participant or any other person, other than a Registered Owner, as shown on the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any person, other than a Registered Owner, as shown on the Registration Books of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Resolution to the contrary, but to the extent permitted by law, the Authority and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Registration Books as the absolute owner of such Bond for the purpose of payment of principal, premium, if any, and interest, with respect to such Bond, for the purposes of registering transfers with respect to such Bonds, and for all other purposes of registering transfers with respect to such Bonds, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Registered Owners, as shown in the Registration Books as provided in this Resolution, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Authority's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to

the extent of the sum or sums so paid. No person other than a Registered Owner, as shown in the Registration Books, shall receive a Bond evidencing the obligation of the Authority to make payments of principal, premium, if any, and interest pursuant to the Resolution. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Resolution with respect to interest checks being mailed to the registered owner at the close of business on the Record Date the word "Cede & Co." in this Resolution shall refer to such new nominee of DTC.

(j) ***Successor Securities Depository; Transfer Outside Book-Entry-Only System.*** In the event the Purchaser no longer owns the Bonds or the Purchaser consents to such action, the Authority may determine to discontinue the book-entry system through DTC or a successor or DTC determines to discontinue providing its services with respect to the Bonds, the Authority shall either (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Registered Owner transferring or exchanging Bonds shall designate, in accordance with the provisions of this Resolution.

(k) ***Payments to Cede & Co.*** Notwithstanding any other provision of this Resolution to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Blanket Representation of the Authority to DTC.

(l) ***Initial Bond.*** The Bonds herein authorized shall be initially issued as fully registered bonds, being one bond for each maturity in the denomination of the applicable principal amount and the initial Bond shall be registered in the name of the Registered Owner. The initial Bond shall be the Bond submitted to the Office of the Attorney General of the State for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State and delivered to the Registered Owner. Immediately after the delivery of the initial Bond, the Paying Agent/Registrar shall cancel the initial Bond delivered hereunder and exchange therefor Bonds in the form of a separate single fully registered Bond for each of the maturities thereof registered in the name of Cede & Co., as nominee of DTC and except as provided in Section 5(j), all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

**Section 6. FORM OF BOND.** The form of the Bond, including the form of the Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State, with respect to the Bonds initially issued and delivered pursuant to this Resolution, shall be, respectively, substantially as set forth in Exhibit

"B", with such appropriate variations, omissions, or insertions as are permitted or required by this Resolution.

**Section 7. PLEDGE OF BOND PAYMENTS.** (a) *Pledge.* The Authority hereby covenants and agrees that the Bond Payments are hereby irrevocably pledged to the payment and security of the Bonds Similarly Secured including the establishment and maintenance of the special funds or accounts created and established on the books and records of the Authority for the payment and security thereof, all as hereinafter provided; and it is hereby resolved that the Bonds Similarly Secured, and the interest thereon, shall constitute a lien on and pledge of the Bond Payments and be valid and binding without any physical delivery thereof or further act by the Authority, and the lien created hereby on the Bond Payments for the payment and security of the Bonds Similarly Secured shall be prior in right and claim as to any other indebtedness, liability, or obligation of the Authority or the Project payable pursuant to the terms of the Contract. The Authority shall deposit the Bond Payments, as collected and received, into the Debt Service Fund (hereinafter defined), to be utilized pursuant to Section 9 hereof to pay the Bonds.

(b) *Perfection of Pledge.* Chapter 1208, as amended, Texas Government Code, applies to the issuance of the Bonds Similarly Secured and the lien on and pledge of Bond Payments granted by the Authority under subsection (a) of this Section, and such pledge is therefore valid, effective, and perfected. If State law is amended at any time while the Bonds Similarly Secured are outstanding and unpaid such that the pledge of the Bond Payments granted by the Authority is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the Registered Owners of the Bonds Similarly Secured the perfection of the security interest in this pledge, the Board agrees to take such measures as it determines are reasonable and necessary under State law to comply with the applicable provisions of Chapter 9, as amended, Texas Business & Commerce Code and enable a filing to perfect the security interest in this pledge to occur.

**Section 8. RATES AND CHARGES.** For the benefit of the Registered Owners of the Bonds Similarly Secured and in addition to all provisions and covenants in the laws of the State and in this Resolution, the Contract between the Authority and the City expressly stipulates and agrees, while any of the Bonds Similarly Secured are Outstanding, the City will fix and collect such rates and charges for services to be supplied by the City's respective systems that will produce gross revenues at all times during the term of the Contract in an amount equal to pay all of the expenses of operation and maintenance of the respective systems including Annual Payments and Bond Payments under the Contract and all other amounts required by the laws and the provisions of the ordinances or resolutions authorizing the City's Outstanding System Obligations now or hereafter outstanding payable, in whole or in part, from the net revenues of the City's Systems, including the amounts required to pay all principal of and interest on the City's outstanding System bonds and other obligations. The Authority hereby expressly stipulates and agrees that it will take all appropriate action to charge rates sufficient and enforce such terms of the Contract while any Bonds Similarly Secured are Outstanding.

The Registered Owner shall never have the right to demand payment for the Bonds out of any funds raised or to be raised from taxation by the City, other Participating Entities or the Authority.

**Section 9. DEBT SERVICE FUND AND PROJECT FUND.** (a) *Debt Service Fund.*

For purposes of providing funds to pay the principal of and interest on the Bonds Similarly Secured as the same become due and payable, the Authority agrees to maintain, at a Depository, a separate and special fund or account to be created and known as the "Alliance Regional Water Authority Contract Revenue Bonds (Regional Water Supply Contract Project – City of San Marcos, Texas), Debt Service Fund" (the "Debt Service Fund"). The Authority covenants that there shall be deposited into the Debt Service Fund prior to each principal and interest payment date solely from the available Bond Payments an amount equal to one hundred per cent (100%) of the amount required to fully pay the interest on and the principal of the Bonds Similarly Secured then falling due and payable.

Any accrued interest received from the Purchaser of the Bonds shall be deposited into the subaccount of the Debt Service Fund. In addition, any surplus proceeds from the sale of the Bonds, including investment income therefrom, not expended for authorized purposes shall be deposited into the Debt Service Fund, and such amounts (i.e., accrued and investment interest) so deposited shall reduce the sum otherwise required to be deposited in the Debt Service Fund from Bond Payments.

(b) *Project Fund.* The Authority hereby creates and establishes and shall maintain on the books and records of the Authority a separate fund or account to be entitled the "Alliance Regional Water Authority Contract Revenue Bonds (Regional Water Supply Contract Project – City of San Marcos, Texas), Project Fund" for use by the Authority for payment of the City's share of the Project Costs. The Authority shall deposit the net proceeds from the sale of the Bonds into the Project Fund as provided in this Resolution. Funds in the Project Fund shall be requisitioned for payment of the City's share of Project Costs in accordance with a requisition in substantially the form set forth in Exhibit "C" attached hereto with such changes as approved by the Authority Representative. Upon payment of all Project Costs, any moneys remaining on deposit in the Project Fund shall be transferred to the Debt Service Fund.

In the event the Project is not completed for any reason contemplated in the Contract or otherwise or any proceeds from the Bonds are not used for completion of the Project for any reason, any Bond proceeds and earnings therein not used for completion of the Project shall be utilized to pay principal and/or interest on the Bonds so as to reduce the Bond Payment as set forth below.

Any surplus proceeds, including the investment earnings derived from the investment of monies on deposit in the Project Fund, from the Bonds remaining on deposit in the Project Fund after completing the Project and upon the completion of the final accounting as described in Section 37(c) hereof, shall be transferred to the Debt Service Fund to redeem, in inverse order of maturity, the Bonds owned by Purchaser, unless the Executive Administrator of Purchaser approves the use of such surplus proceeds to pay eligible Project Costs by funding projects that are a part of the State Water Plan.

**Section 10. DEFICIENCIES - EXCESS BOND PAYMENTS.** (a) *Deficiencies.* If on any occasion there shall not be sufficient Bond Payments to make the required deposits into the Debt Service Fund, then such deficiency shall be cured as soon as possible from the next available

unallocated Bond Payments and such payments shall be in addition to the amounts required to be paid into these Funds or accounts during such month or months.

(b) **Excess Bond Payments** Subject to making the required deposits to the Debt Service Fund when and as required by this Resolution or any resolution authorizing the issuance of Additional Bonds, any excess Bond Payments may be used by the Authority for any lawful purpose including, but not limited to, the redemption of any Bonds Similarly Secured.

**Section 11. PAYMENT OF BONDS.** While any of the Bonds Similarly Secured are Outstanding, the Executive Director of the Authority or other authorized Authority official, shall cause to be transferred to the Paying Agent/Registrar therefor, from funds on deposit in the Debt Service Fund, amounts sufficient to fully pay and discharge promptly each installment of interest on and principal of the Bonds Similarly Secured as such installment accrues or matures; such transfer of funds must be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar for the Bonds at the close of the Business Day next preceding the date a debt service payment is due on the Bonds Similarly Secured.

**Section 12. INVESTMENTS.** Funds held in any fund or account created, established, or maintained pursuant to this Resolution shall, at the option of the Authority, be invested in time deposits, certificates of deposit, guaranteed investment contracts, or similar contracting arrangements and/or as permitted by the provisions of the Public Funds Investment Act, as amended, Chapter 2256, Texas Government Code, or any other law, and secured (to the extent not insured by the Federal Deposit Insurance Corporation) to the fullest extent required by the Public Funds Collateral Act, as amended, Chapter 2257, Texas Government Code. All interest and income derived from deposits and investments in any fund shall immediately be credited to, and any losses debited from, the fund from which such funds were derived. All such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds.

**Section 13. ISSUANCE OF ADDITIONAL BONDS.** In addition to the right to issue bonds of inferior lien as authorized by the laws of this State, the Authority reserves the right hereafter to issue Additional Bonds. The Additional Bonds, when issued, shall be payable from and secured by a lien on and pledge of the Bond Payments in the same manner and to the same extent as the Bonds and the Bonds Similarly Secured, and shall in all respects be of equal dignity. The Additional Bonds may be issued in one or more Series provided, however, that no Additional Bonds, shall be issued unless and until the following conditions have been met:

(i) Except for a refunding to cure a default, the Authority is not then in default as to any covenant, condition or obligation prescribed in the resolutions authorizing the issuance of the Bonds Similarly Secured or the Contract (including any amendment or supplement thereto) and the funds under the resolution authorizing the same contains the amounts then required to be therein;

(ii) The City shall have approved the resolution(s) authorizing the issuance of the Additional Bonds as to form and content and acknowledged that the payment of principal of and interest on such Additional Bonds is payable, in whole or in part, from the Bond Payments to be made to the Authority under and pursuant to the Contract;

(iii) The resolution authorizing the issuance of the Additional Bonds provides for deposits to be made to the Debt Service Fund in amounts sufficient to pay the principal of and interest on such Additional Bonds as the same become due; and

(iv) The City confirms (and counsel to the Authority opines) that the Contract is a legal, valid and binding contract then in effect pursuant to which the City is obligated to make payments to the Authority during each fiscal year (including periods when services of the Project may not be available to such contracting parties and others) in such amounts as shall be necessary to provide to the Authority sufficient funds to pay when due all principal and interest on all Bonds and Additional Bonds to be outstanding after the issuance of the proposed Additional Bonds.

The Bonds Similarly Secured may be refunded (pursuant to any law then available) upon such terms and conditions as the Board of the Authority may deem to be in the best interest of the Authority.

**Section 14. SPECIAL PROJECT BONDS.** The Authority further reserves the right to issue bonds in one or more installments for the purchase, construction, improvement, extension, replacement, enlargement or repair of utility facilities necessary under a contract or contracts with persons, corporations, municipal corporations, political subdivisions, or entities including the City, such bonds to be payable from and secured by the proceeds of such contract or contracts (other than the Contract). The Authority further reserves the right to refund such bonds and secure the payment of the debt service requirements on the refunding bonds in the same manner or as otherwise permitted by the laws of the State.

**Section 15. MAINTENANCE OF PROJECT - INSURANCE.** The Authority covenants, agrees, and affirms its covenants that while the Bonds Similarly Secured remain outstanding it will maintain and operate the Project with all possible efficiency and maintain casualty and other insurance on the properties of the Project and its operations of a kind and in such amounts customarily carried by municipal corporations in the State engaged in a similar type of business (which may include an adequate program of self-insurance) which insurance shall also be sufficient to protect the Purchaser; and that it will faithfully and punctually perform all duties with reference to the Project required by the laws of the State. All money received from losses under such insurance policies, other than public liability policies, shall be retained for the benefit of the Registered Owners of the Bonds Similarly Secured until and unless the proceeds are paid out in making good the loss or damage in respect of which such proceeds are received, either by replacing the property destroyed or repairing the property damaged, and adequate provision for making good such loss or damage must be made within ninety (90) days after the date of loss. The payment of premiums for all insurance policies required under the provisions hereof shall be considered Maintenance and Operating Expenses of the Project. Nothing in this Resolution shall be construed as: (i) requiring the Authority to expend any funds which are derived from sources other than the operation of the Project but nothing herein shall be construed as preventing the Authority from doing so or (ii) requiring the purchase of insurance until Facilities are constructed.

**Section 16. RECORDS AND ACCOUNTS - ANNUAL AUDIT.** The Authority covenants, agrees, and affirms its covenants that so long as any of the Bonds Similarly Secured remain outstanding, it will keep and maintain separate and complete records and accounts pertaining to the operations of the Project in which complete and correct entries shall be made of all transactions

relating thereto as provided by applicable law. The Registered Owners of any Bonds or any duly authorized agent or agents of such Registered Owners shall have the right to inspect the Project and all properties comprising the same. The Authority further agrees that following (and in no event later than six (6) months after) the close of each Fiscal Year, it will cause an audit of such books and accounts to be made by an independent firm of Certified Public Accountants. Expenses incurred in making the annual audit of the operations of the Project are to be regarded as Operation and Maintenance Expenses of the Project.

**Section 17. SALE OR ENCUMBRANCE OF SYSTEM.** While any Bonds remain Outstanding, the Authority will not sell, dispose of or further encumber the Project or any substantial part thereof; provided, however, that this provision shall not prevent the Authority from (i) pledging the Bond Payments and Funds to Additional Bonds or Special Project Bonds as set forth in Sections 13 and 14 of this Resolution or (ii) disposing of any part of the Project which is being replaced or is deemed by the Authority to be obsolete, worn out, surplus or no longer needed for the proper operation of the Project. Any agreement pursuant to which the Authority contracts with a person, corporation, municipal corporation or political subdivision to operate the Project or to lease and/or operate all or part of the Project shall not be considered as an encumbrance of the Project; provided, however, no such agreement shall impair the pledge and lien on the Bond Payments and Funds.

**Section 18. SPECIAL COVENANTS.** The Authority further covenants and agrees that:

(a) **Title.** The Authority lawfully owns or will own and is or will be lawfully possessed of the lands, easements or other property rights (including leasehold interests) upon which its Project is and will be located, and has or will purchase good and indefeasible estate in such lands in fee simple, or has or will lawfully obtain any necessary easements or has or will lawfully obtain property rights (including leasehold interests) to operate the Project, and it warrants that it has or will obtain and will defend, the title to all the aforesaid lands, easements and property rights for the benefit of the Registered Owners of the Bonds against the claims and demands of all persons whomsoever, that it is lawfully qualified to pledge the Bond Payments to the payment of the Bonds Similarly Secured, in the manner prescribed herein, and that it has lawfully exercised such rights.

(b) **Liens.** The Authority will from time to time and before the same become delinquent pay and discharge all taxes, assessments, and governmental charges, if any, which shall be lawfully imposed upon it, or its Project, and it will pay all lawful claims for rents, royalties, labor, materials, and supplies which if unpaid might by law become a lien or charge upon its Project, provided, however, that no such tax, assessment, or charge, and that no such claims which might be or other lien or charge, shall be required to be paid while the validity of the same shall be contested in good faith by the Authority.

(c) **Performance.** The Authority will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in the resolutions authorizing the issuance of Bonds Similarly Secured, and in each and every Bond Similarly Secured and pay from the Bond Payments the principal of and interest on every Bond Similarly Secured on the dates and in the places and manner prescribed in such resolutions and Bonds Similarly Secured; and that it will, at the times and in the manner prescribed, deposit or cause to be deposited from the Bond Payments the amounts required to be deposited into the Debt Service Fund; and the Registered Owner of the Bonds Similarly Secured may require the Authority, its officials, agents, and employees to carry

out, respect, or enforce the covenants and obligations of this Resolution or any resolution authorizing the issuance of Bonds Similarly Secured including, but without limitation, the use and filing of mandamus proceedings, in any court of competent jurisdiction, against the Authority, its officials, agents, and employees.

(d) **Legal Authority.** The Authority is duly authorized under the laws of the State, including the Act, to issue the Bonds Similarly Secured; that all action on its part for the authorization and issuance of the Bonds Similarly Secured has been duly and effectively taken, and the Bonds Similarly Secured in the hands of the Registered Owners thereof are and will be valid and enforceable special obligations of the Authority in accordance with their terms payable solely from the Bond Payments.

(e) **Budget.** The Authority will prepare, adopt, and place into effect an annual budget (the "Annual Budget") for Operation and Maintenance Expenses of the Project for each Fiscal Year, including in each Annual Budget such items as are customarily and reasonably contained in a utility project budget under generally accepted accounting procedures and shall deliver such budget at least 90 days prior to adoption for review and comment by the City.

(f) **Permits.** The Authority will comply with all of the terms and conditions of any and all franchises, permits, and authorizations applicable to or necessary with respect to the Project and which have been obtained from any governmental Authority; and the Authority has or will obtain and keep in full force and effect all franchises, permits, authorizations, and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation, and maintenance of the Project.

**Section 19. LIMITED OBLIGATIONS OF THE AUTHORITY.** The Bonds similarly Secured are limited, special obligations of the Authority payable from and equally and ratably secured solely by a lien on and pledge of the Bond Payments, and the Registered Owners thereof shall never have the right to demand payment of the principal or interest on the Bonds Similarly Secured from any funds raised or to be raised through taxation by the City or the Authority.

**Section 20. DEFAULT AND REMEDIES.** (a) **Events of Default.** Each of the following occurrences or events for the purpose of this Resolution is hereby declared to be an Event of Default:

(i) the failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the Authority, the failure to perform which materially, adversely affects the rights of the Registered Owners of the Bonds, including, but not limited to, their prospect or ability to be repaid in accordance with this Resolution, and, if such default is capable of cure, the continuation thereof for a period of sixty (60) days after notice of such default is given by any Registered Owner to the Authority; or

(iii) a default by the City under the Contract.

(b) ***Remedies for Event of Default.***

(i) Upon the happening of any Event of Default, then and in every case, any Registered Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the Authority, or any official, officer or employee of the Authority in their official capacity, for the purpose of protecting and enforcing the rights of the Registered Owners under this Resolution, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Registered Owners hereunder or any combination of such remedies. The Registered Owners are third party beneficiaries to the Contract with the ability to enforce the provisions of the Contract for such period that a default exists under the Contract.

(ii) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Registered Owners of Bonds then Outstanding.

(iii) Notwithstanding anything in this Resolution to the contrary, so long as the Purchaser continue to hold the Bonds, the Purchaser may exercise all remedies available to it in law or equity and any provision in this Resolution or the Bonds that restricts or limits the Purchaser's full exercise of these remedies shall be of no force and effect.

(c) ***Remedies Not Exclusive.***

(i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Resolution, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Resolution.

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

(iii) By accepting the delivery of a Bond authorized under this Resolution, such Registered Owner agrees that the certifications required to effectuate any covenants or representations contained in this Resolution do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the Authority or the Board.

(iv) None of the members of the Board, nor any other official or officer, agent, or employee of the Authority, shall be charged personally by the Registered Owners with any liability, or be held personally liable to the Registered Owners under any term or provision of this Resolution, or because of any Event of Default or alleged Event of Default under this Resolution.

**Section 21. AMENDMENT OF RESOLUTION.** (a) *Amendments Without Consent.* This Resolution and the rights and obligations of the Board and of the Registered Owners of the Bonds may be modified or amended at any time without notice to or the consent of any Registered Owner of the Bonds or any Bond similarly secured, solely for any one or more of the following purposes:

(i) To add to the covenants and agreements of the Board contained in this Resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power reserved to or conferred upon the Board in this Resolution;

(ii) To cure any ambiguity or inconsistency, or to cure or correct any defective provisions contained in this Resolution, upon receipt by the Board of an opinion of counsel, that the same is needed for such purpose, and will more clearly express the intent of this Resolution;

(iii) To supplement the security for the Bonds, replace or provide additional Credit Agreement, or change the form of the Bonds or make such other changes in the provisions hereof as the Board may deem necessary or desirable and which shall not, in the judgment of the Board, materially adversely affect the interests of the owners of the Outstanding Bonds;

(iv) To make any changes or amendments requested by any bond rating Authority then rating or requested to rate the Bonds, as a condition to the issuance or maintenance of a rating, which changes or amendments do not, in the judgment of the Board, materially adversely affect the interests of the owners of the Outstanding Bonds;

(v) To make such other changes in the provisions hereof as the Board may deem necessary or desirable and which shall not, in the judgment of the Board, materially adversely affect the interests of the owners of the Outstanding Bonds; or

(vi) To assign the Contract to a trustee.

(b) *Amendments With Consent.* Subject to the other provisions of this Resolution, the Registered Owners of Outstanding Bonds aggregating 51% in Outstanding Principal Amount shall have the right from time to time to approve any amendment, other than amendments described in Subsection (a) of this Section, to this Resolution which may be deemed necessary or desirable by the Board; provided, however, that nothing herein contained shall permit or be construed to permit, without the approval of the owners of all of the Outstanding Bonds, the amendment of the terms and conditions in this Resolution or in the Bonds so as to:

(1) Make any change in the maturity of the Outstanding Bonds;

(2) Reduce the rate of interest borne by the Outstanding Bonds;

(3) Reduce the amount of the principal payable on the Outstanding Bonds;

(4) Modify the terms of payment of principal of or interest on the Outstanding Bonds, or impose any conditions with respect to such payment;

- (5) Affect the rights of the owners of less than all Bonds then Outstanding; or
- (6) Change the minimum percentage of the Outstanding Principal Amount of Bonds necessary for consent to such amendment.

(c) **Notice.** (i) If at any time the Board shall desire to amend this Resolution other than pursuant to (a) above, the Board shall cause notice of the proposed amendment to be published in a financial newspaper or journal of general circulation in The City of New York, New York or the State including in the Texas Bond Reporter once during each calendar week for at least two (2) successive calendar weeks. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Paying Agent/Registrar for inspection by all owners of Bonds. Such publication is not required, however, if the Board gives or causes to be given such notice in writing to each Registered Owner of Bonds.

(d) **Receipt of Consents.** Whenever at any time not less than thirty (30) days, and within one (1) year, from the date of the first publication of said notice or other service of written notice of the proposed amendment the Board shall receive an instrument or instruments executed by all of the owners or the owners of at least 51% in Outstanding Principal Amount of Bonds, as appropriate, which instrument or instruments shall refer to the proposed amendment described in said notice and which specifically consent to and approve such amendment in substantially the form of the copy thereof on file as aforesaid, the Board may adopt the amendatory resolution in substantially the same form.

(e) **Effect of Amendments.** Upon the adoption by the Board of any resolution to amend this Resolution pursuant to the provisions of this Section, this Resolution shall be deemed to be amended in accordance with the amendatory resolution, and the respective rights, duties, and obligations of the Board and all the owners of then Outstanding Bonds and all future Bonds shall thereafter be determined, exercised, and enforced under the resolution and this Resolution, as amended.

(f) **Consent Irrevocable.** Any consent given by any owner of Bonds pursuant to the provisions of this Section shall be irrevocable for a period of six (6) months from the date of the first publication or other service of the notice provided for in this Section, and shall be conclusive and binding upon all future owners of the same Bonds during such period. Such consent may be revoked at any time after six (6) months from the date of the first publication of such notice by the owner who gave such consent, or by a successor in title, by filing notice thereof with the Registrar and the Board, but such revocation shall not be effective if the owners of 51% in Outstanding Principal Amount of Bonds, prior to the attempted revocation, consented to and approved the amendment.

(g) **Ownership.** For the purpose of this Section, the ownership and other matters relating to all Bonds registered as to ownership shall be determined from the Registration Books kept by the Paying Agent/Registrar therefor. The Paying Agent/Registrar may conclusively assume that such ownership continues until written notice to the contrary is served upon the Paying Agent/Registrar.

**Section 22. COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE BONDS.** (a) *Covenants.* The Authority covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Bonds as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the Authority covenants as follows:

- (1) to take any action to assure that no more than 10 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the Authority, with respect to such private business use, do not, under the terms of this Order or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Bonds, in contravention of section 141(b)(2) of the Code;
- (2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;
- (3) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;
- (4) to refrain from taking any action which would otherwise result in the Bonds being treated as "private activity bonds" within the meaning of section 141(b) of the Code;
- (5) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;
- (6) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired with --
  - (A) proceeds of the Bonds invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 90 days or less until such proceeds are needed for the purpose for which the bonds are issued,

- (B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and
  - (C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Bonds;
- (7) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, so that the Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings);
  - (8) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Bonds have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code;
  - (9) to file or cause to be filed with the Secretary of the Treasury, not later than the 15<sup>th</sup> day of the second calendar month after the close of the calendar quarter in which the Bonds are issued, an information statement concerning the Bonds, all under and in accordance with section 149(e) of the Code and the applicable Treasury Regulations promulgated thereunder; and
  - (10) the Authority will not acquire any of the Purchaser source series bonds in an amount related to the amount of Bonds acquired by the Purchaser.

(b) **Rebate Fund.** In order to facilitate compliance with the above covenant (8), a "Rebate Fund" is hereby established by the Authority for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) **Proceeds.** The Authority understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations. It is the understanding of the Authority that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the Authority will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the Authority agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention,

the Authority hereby authorizes and directs the Executive Director to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Authority, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

(d) ***Allocation Of, and Limitation On, Expenditures for the Project.*** The Authority covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section 2 of this Resolution (the "Project") on its books and records in accordance with the requirements of the Internal Revenue Code. The Authority recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the Authority recognizes that in order for proceeds to be expended under the Internal Revenue Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Bonds, or (2) the date the Bonds are retired. The Authority agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax- exempt status of the Bonds. For purposes hereof, the Authority shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) ***Disposition of Project.*** The Authority covenants that the property constituting the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the Authority of cash or other compensation, unless any action taken in connection with such disposition will not adversely affect the tax-exempt status of the Bonds. For purpose of the foregoing, the Authority may rely on an opinion of nationally-recognized bond counsel that the action taken in connection with such sale or other disposition will not adversely affect the tax- exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the Authority shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(f) ***Reimbursement.*** This Resolution is intended to satisfy the official intent requirements set forth in section 1.150-2 of the Treasury Regulations.

**Section 23. RESOLUTION TO CONSTITUTE A CONTRACT; EQUAL SECURITY.** In consideration of the acceptance of the Bonds, the issuance of which is authorized hereunder, by those who shall hold the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Board and the Registered Owners from time to time of the Bonds and the pledge made in this Resolution by the Board and the covenants and agreements set forth in this Resolution to be performed by the Board shall be for the equal and proportionate benefit, security, and protection of all Registered Owners, without preference, priority, or distinction as to security or otherwise of any of the Bonds authorized hereunder over any of the others by reason of time of issuance, sale, or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this Resolution.

**Section 24. SEVERABILITY OF INVALID PROVISIONS.** If any one or more of the covenants, agreements, or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements, or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Bonds issued hereunder.

**Section 25. PAYMENT AND PERFORMANCE ON BUSINESS DAYS.** Except as provided to the contrary in the FORM OF BOND, whenever under the terms of this Resolution or the Bonds, the performance date of any provision hereof or thereof, including the payment of principal of or interest on the Bonds, shall occur on a day other than a Business Day, then the performance thereof, including the payment of principal of and interest on the Bonds, need not be made on such day but may be performed or paid, as the case may be, on the next succeeding Business Day with the same force and effect as if made on the date of performance or payment.

**Section 26. LIMITATION OF BENEFITS WITH RESPECT TO THE RESOLUTION.** With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this Resolution or the Bonds is intended or should be construed to confer upon or give to any person other than the Board, the Registered Owners, and the Paying Agent/Registrar, any legal or equitable right, remedy, or claim under or by reason of or in respect to this Resolution or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This Resolution and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the Board, the Registered Owners, and the Paying Agent/Registrar as herein and therein provided.

**Section 27. CUSTODY, APPROVAL, BOND COUNSEL'S OPINION, CUSIP NUMBERS AND PREAMBLE.** The Authority Representative is hereby authorized to have control of the Bonds issued hereunder and all necessary records and proceedings pertaining to the Bonds pending their delivery and approval by the Attorney General of the State. The Authority Representative is hereby authorized, to the extent deemed necessary or advisable thereby, in the discretion thereof, to request that the Attorney General approve the Bonds as permitted by Chapter 1202, Texas Government Code, in which case the Authority Representative also is authorized to request the Comptroller of Public Accounts register the Bonds, and to cause an appropriate legend reflecting such approval and registration to appear on the Bonds and the substitute Bonds. The approving legal opinion of the Board's Bond Counsel and the assigned CUSIP numbers may, at the option of the Board, be printed on the Bonds and on any Bonds issued and delivered in exchange or replacement of any Bond, but neither shall have any legal effect, and shall be solely for the convenience and information of the Registered Owners of the Bonds. The preamble to this Resolution is hereby adopted and made a part of this Resolution for all purposes.

**Section 28. CONTINUING DISCLOSURE UNDERTAKING.** (a) *Annual Reports.* The Authority shall provide annually to the MSRB, (1) within six months after the end of each fiscal year of the Authority, financial and operating data of the general type, being the information of the type described in Exhibit "D" hereto including financial statements of the Authority if audited

financial statements of the Authority are then available, and (2) if not provided as part such financial information and operating data, audited financial statements of the Authority, when and if available. Any financial statements to be provided shall be (i) prepared in accordance with the generally accepted accounting principles for governmental units, or such other accounting principles as the Authority may be required to employ from time to time pursuant to state law or regulation, and in substantially the form included in the official statement, and (ii) audited, if the Authority commissions an audit of such financial statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within 12 months after any such fiscal year end, then the Authority shall file unaudited financial statements within such 12-month period and audited financial statements for the applicable fiscal year, when and if the audit report on such statements becomes available.

If the Authority changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Board otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document that is available to the public on the MSRB's internet web site or filed with the SEC. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

(b) ***Event Notices.*** The Authority shall file notice to notify the MSRB of any of the following events with respect to the Bonds in a timely manner and not more than ten business days after the occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other events affecting the tax status of the Bonds
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;

10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of the Authority;
13. The consummation of a merger, consolidation, or acquisition involving the Authority or the sale of all or substantially all of the assets of the Authority, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a Financial Obligation of the Authority, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Authority, any of which affect security holder, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Authority, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Authority in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Authority, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers of the Authority in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Authority, and (b) the Authority intends the words used in the immediately preceding paragraphs (15) and (16) and the definition of Financial Obligation in this Section to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

The Authority shall notify the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner, of any failure by the Authority to provide financial information or operating data in accordance with subsection (a) of this Section by the time required by such subsection. All documents

provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

(b) *Limitations, Disclaimers, and Amendments.* The Board shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Board remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the Board in any event will give notice of any deposit made in accordance with Section 30 of this Resolution that causes the Bonds no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Board undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Board's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Board does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE AUTHORITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE AUTHORITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR *MANDAMUS* OR SPECIFIC PERFORMANCE.

No default by the Authority in observing or performing its obligations under this Section shall comprise a breach of or default under this Resolution for purposes of any other provision of this Resolution.

Should the Rule be amended to obligate the Authority to make filings with or provide notices to entities other than the MSRB, the Board of the Authority hereby agrees to undertake such obligation with respect to the Bonds in accordance with the Rule as amended.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Board under federal and state securities laws.

The provisions of this Section may be amended by the Board of the Authority from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Board, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount

(or any greater amount required by any other provision of this Resolution that authorizes such an amendment) of the outstanding Bonds consents to such amendment or (b) a person that is unaffiliated with the Board (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interest of the holders and beneficial owners of the Bonds. If the Board of the Authority so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with paragraph (a) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The Board may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds.

**Section 29. APPLICATION OF BOND PROCEEDS.** (a) Proceeds from the sale of the Bonds shall, promptly upon receipt thereof, be applied by the Authority Representative as follows:

- (i) accrued interest, if any, for the Bonds shall be deposited as provided in Section 9(a);
- (ii) an amount sufficient to accomplish the purposes of Section 2(b) shall be deposited to the Project Fund; and
- (iii) any proceeds from the sale of the Bonds remaining after the deposits provided for in clauses (i) and (ii) above, shall be applied to pay expenses arising in connection with the issuance of the Bonds.

Any sale proceeds of the Bonds remaining after making all deposits and payments provided for above shall be applied to the payment of interest on the Bonds and deposited into the Debt Service Fund.

**Section 30. DEFEASANCE PROVISIONS.** (a) Any Bond and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Bond") within the meaning of this Resolution, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such Bond, plus interest thereon to the due date or dates (whether such due date or dates be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption or the establishment of irrevocable provisions for the giving of such notice) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar or an eligible trust company or commercial bank for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the Authority with the Paying Agent/Registrar or an eligible trust company or commercial bank for the payment of its services until all Defeased Bonds shall have become due and payable or (3) any combination of (1) and (2). At such time as a Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the

benefits of, the Bond Payments as provided in this Resolution, and such principal and interest shall be payable solely from such money or Defeasance Securities

b) The deposit under clause (ii) of subsection (a) shall be deemed a payment of a Bond as aforesaid when proper notice of redemption of such Bonds shall have been given or upon the establishment of irrevocable provisions for the giving of such notice, in accordance with this Resolution. Any money so deposited with the Paying Agent/Registrar or an eligible trust company or commercial bank as provided in this Section may at the discretion of the Authority also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section which is not required for the payment of such Bond and premium, if any, and interest thereon with respect to which such money has been so deposited, shall be remitted to the Authority.

c) Notwithstanding any provision of any other Section of this Resolution which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of the Bonds and premium, if any, and interest thereon, shall be applied to and used solely for the payment of the particular Bonds and premium, if any, and interest thereon, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds the same as if they had not been defeased, and the Authority shall make proper arrangements to provide and pay for such services as required by this Resolution.

d) Notwithstanding anything elsewhere in this Resolution, if money or Defeasance Securities have been deposited or set aside with the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment of the provisions of this Section shall be made without the consent of the registered owner of each Bond affected thereby.

e) Notwithstanding the provisions of subsection (a) immediately above, to the extent that, upon the defeasance of any Defeased Bond to be paid at its maturity, the Authority retains the right under State law to later call that Defeased Bond for redemption in accordance with the provisions of this Resolution, the Authority may call such Defeased Bond for redemption upon complying with the provisions of State law and upon the satisfaction of the provisions of subsection (a) immediately above with respect to such Defeased Bond as though it was being defeased at the time of the exercise of the option to redeem the Defeased Bond and the effect of the redemption is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased Bond.

**Section 31. SALE OF BONDS; USE OF PROCEEDS.** (a) *Sale to the Texas Water Development Board ("Purchaser")*. That the Bonds are hereby sold to the Purchaser for the price of par. The Bonds have been purchased by the Purchaser pursuant to TWDB Resolution No. 17-079, adopted on July 20, 2017, as amended by TWDB Resolution No. 19-077 adopted on July 22, 2019, as amended by TWDB Resolution No. 20-067 (collectively, the "Purchaser Resolution"). The Bonds initially delivered shall be registered in the name of the Texas Water Development Board.

The Private Placement Memorandum prepared in connection with the sale of the Bonds to the Purchaser in substantially the form attached to this Resolution is approved. The Authority has determined, based upon the advice provided by its financial advisors, that acceptance of the purchase price for the Bonds is on terms advantageous to, and in the best interests of, the Authority.

(b) **Notice from Purchaser of Sale of Bonds.** It is the intent of the parties to the sale of the Bonds that if Purchaser ever determines to sell all or a part of the Bonds, it shall notify the Authority at least 60 days prior to the sale of the Bonds of the decision to so sell the Bonds.

(c) **Proceeds.** The proceeds from the sale of the Bonds shall be used in the manner described in the letter of instructions executed by the Authority, or on behalf of the Authority by its financial advisor.

(d) **Payment by Wire Transfer.** Payment of amounts due and owing on the Bonds to the Purchaser shall be made by wire transfer, at no expense to the Purchaser, as provided in the FORM OF BOND.

(e) **Escrow Fund.** By agreeing to the purchase the Bonds, the Purchaser agrees that the Bond proceeds shall be deposited into the escrow fund established in the Escrow Agreement between the Authority and BOKF, NA.

(f) **Investment of Bond Proceeds.** Proceeds from the sale of the Bonds shall be held at a depository or other properly chartered and authorized institution in accordance with Chapter 2256, Texas Government Code, and Chapter 2257, Texas Government Code.

**Section 32. FURTHER PROCEDURES.** The Authority Representative and all other officers, employees, and agents of the Board, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and on behalf of the Board all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution, the Bonds, the sale and delivery of the Bonds and fixing all details in connection therewith. The Authority Representative is authorized to sign this Resolution.

**Section 33. REPEAL OF CONFLICTING RESOLUTIONS.** All resolutions and all parts of any resolutions which are in conflict or inconsistent with this Resolution are hereby repealed and shall be of no further force or effect to the extent of such conflict or inconsistency.

**Section 34. PUBLIC NOTICE.** It is hereby found and determined that each of the officers and members of the Board was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of the Meeting at which this Resolution was adopted; that this Resolution would be introduced and considered for adoption at said meeting; and that said meeting was open to the public, and public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

**Section 35. NO PERSONAL LIABILITY.** No covenant or agreement contained in the Bonds, this Resolution or any corollary instrument shall be deemed to be the covenant or agreement

of any member of the Board or the City or any officer, agent, employee or representative of the Board or the City in their individual capacity, and neither the directors, officers, agents, employees or representatives of the Board or the City nor any person executing the Bonds shall be personally liable thereon or be subject to any personal liability for damages or otherwise or accountability by reason of the issuance thereof, or any actions taken or duties performed, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the issuance of the Bonds.

**Section 36. APPROVAL OF ESCROW AGREEMENT, PAYING AGENT/REGISTRAR AGREEMENT, BLANKET ISSUER LETTER OF REPRESENTATIONS WITH THE DEPOSITORY TRUST COMPANY AND CREDIT AGREEMENTS.** (a) The Escrow Agreement by and between the Authority and BOKF, NA, as Escrow Agent ("Escrow Agreement") in substantially the form and substance submitted to the Board is hereby approved, and the Authority Representative is hereby authorized to complete, amend, modify, and execute the Escrow Agreement, as necessary.

(b) The Paying Agent/Registrar Agreement by and between the Authority and BOKF, NA ("Paying Agent Agreement"), in substantially the form and substance submitted to the Board is hereby approved and the Authority Representative is hereby authorized and directed to complete, amend, modify, and execute the Paying Agent Agreement, as necessary.

(c) The Blanket Issuer Letter of Representations with the Depository Trust Company has been previously executed by the Authority Representative and is hereby authorized to be utilized in connection with the Bonds.

(d) To the extent permitted by law, the Authority reserves the right to enter into Credit Agreements in connection with the Bonds, upon the written opinion of the Authority Representative that such Credit Agreements are in the best interest of the Authority given the market conditions at the time. The Credit Agreements will constitute a Credit Agreement as defined in this Resolution. Credit Agreements and the obligations thereunder may, pursuant to their terms, constitute (i) debt secured by a pledge of the Bond Payments on parity with the Bonds Similarly Secured (ii) debt secured by an inferior lien secured by a pledge of the Bond Payments subordinate to the Bonds Similarly Secured or (iii) partially parity and partially inferior lien.

**Section 37. ADDITIONAL COVENANTS.** In connection with the sale of the Bonds to the Purchaser, the Authority covenants as follows:

(a) *Compliance with the Texas Water Development Board's Rules and Regulations.* The Authority covenants to comply with the rules and regulations of the Purchaser, and to maintain insurance on the Project in such amount as may be required by Purchaser, as further addressed in subsection (h) of this Section.

(b) *Audits.* For so long as the State owns any of the Bonds, the Authority shall mail a copy of the audit required by this Resolution to the Purchaser. In addition, monthly operating statements for the Project shall be maintained by the Authority and made available, on request, to

the Purchaser as long as the State owns any of the Bonds, and the monthly operating statement shall be in such detail as requested by the Development Fund Manager of the Purchaser until this requirement is waived thereby. The Authority shall also provide, or cause to be provided, a copy of the City's audit within 180 days after the City's fiscal year end.

(c) **Final Accounting.** Within 60 days of Project completion, the Authority shall render a final accounting to the Purchaser in reference to the total cost incurred by the Authority for the Project which were financed by the issuance of the Bonds, together with a copy of "as built" plans of such Project.

(d) **Defeasance.** Should the Authority exercise its right under this Resolution to effect the defeasance of the Bonds, the Authority agrees that it will provide the Purchaser with 30 days written notice of any such defeasance.

(e) **Segregation of Funds.** The Authority covenants that proceeds of the Bonds shall remain separate and distinct from other sources of funding from the date of the Purchaser commitment through costing and final disbursement.

(f) **Environmental Indemnity.** Proceeds from the Bonds shall not be used by the Authority when sampling, testing, removing, or disposing of contaminated soils and/or media at the Project site. To the extent permitted by law, the Authority agrees to indemnify, hold harmless, and protect the Purchaser from any and all claims, causes of action, or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, and disposition of any contaminated sewage sludge, contaminated sediments, and/or contaminated media that may be generated by the Authority, its contractors, consultants, agents, officials, and employees as a result of activities relating to the project funded with proceeds of the Bonds.

(g) **Environmental Determination.** In connection with the Project financed with the Bonds, the Authority agrees to implement any environmental determination issued by the Executive Administrator of Purchaser to satisfy the environmental review requirements set forth in 31 Texas Administrative Code 371.

(h) **Insurance.** The Authority agrees that it will maintain insurance on the Project in an amount sufficient to protect Purchaser's interest in the project financed with the proceeds of the Bonds. The Authority may self-insure in respect to satisfying this covenant.

(i) **No Purchase of Purchaser Bonds.** The Authority agrees that it, nor any related party to the Authority, will not purchase, as an investment or otherwise, bonds issued by Purchaser including, without limitation, bonds issued by Purchaser, the proceeds of which were used by Purchaser to purchase the Bonds.

(j) **Compliance with Federal Contracting Laws.** The Authority acknowledges that it has a legal obligation to comply with any applicable requirements of federal law relating to contracting with disadvantaged business enterprises.

(k) **Compliance with State Contracting Laws.** The Authority acknowledges that it has a legal obligation to comply with any applicable requirements of State law relating to contracting

with historically underutilized businesses and will report to the Purchaser the amounts of Project funds, if any, that are used to compensate historically underutilized businesses that work on the Project in accordance with 31 TAC '363.1312.

(l) ***No Advance Refunding.*** The Authority will not use proceeds of the Bonds to advance refund any outstanding bonds.

**Section 38. APPROVAL CERTIFICATE.** Pursuant to Section 3.1 of the Contract, the City has authorized the execution of an approval certificate attached hereto as Exhibit "F" which evidences the approval of the terms and provisions of the Bonds as set forth herein by the City.

**PASSED AND ADOPTED** this October 28, 2020

**ALLIANCE REGIONAL WATER AUTHORITY**

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Authority Representative

## **EXHIBIT A DEFINITIONS**

As used in this Resolution, the following terms and expressions shall have the meanings set forth below, unless the text in this Resolution specifically indicates otherwise.

The term *Additional Bonds* shall mean the obligations issued in accordance with the terms and conditions prescribed in Section 13 hereof.

The term *Annual Payments* shall have the meaning given in each Contract.

The term *Authorized Denominations* shall mean shall mean the denomination of \$5,000 or any integral multiple thereof.

The term *Authority* shall mean Alliance Regional Water Authority and any other public Authority succeeding to the powers, rights, privileges and functions of the Authority and, when appropriate, the Board of the Authority.

The term *Authority Representative* shall mean the Chair, Vice Chair or the Executive Director of the Authority or such other person authorized by the Board to act as an Authority Representative.

The term *Average Annual Debt Service Requirements* shall mean that average amount which, at the time of computation, will be required to pay the Debt Service Requirements on all outstanding Bonds Similarly Secured when due (either at Stated Maturity or mandatory redemption) and derived by dividing the total of such Debt Service Requirement by the number of Fiscal Years then remaining before Stated Maturity of such Bonds Similarly Secured. For purposes of this definition, a fractional period of a Fiscal Year shall be treated as an entire Fiscal Year. Capitalized interest payments provided from Bond proceeds shall be excluded in making the aforementioned computation.

The term *Board* shall mean the Board of Directors of the Authority.

The term *Bond Payments* shall mean the payments defined as "Bond Payments" within the Contract that the Authority expects to receive from the City of San Marcos, Texas pursuant to the terms of the Contract.

The term *Bonds* shall mean and include collectively the Bonds issued and delivered and all substitute Bonds exchanged therefor, as well as all other substitute bonds and replacement bonds issued pursuant hereto, and the term *Bond* shall mean any of the Bonds.

The term *Bonds Similarly Secured* shall mean the Series 2017 Bonds and the Bonds issued pursuant to this Resolution and any Additional Bonds hereafter issued by the Authority or bonds issued to refund any of the foregoing if issued in a manner that provides that the refunding bonds are payable from and equally and ratably secured by a lien on and pledge of the Bond Payments.

The term *Business Day* shall mean any day which is not a Saturday, Sunday, legal holiday, or a day on which banking institutions in The Authority of New York, New York or in the city where the Designated Trust Office of the Paying Agent/Registrar is located are authorized by law or executive order to close.

The term *Certified Public Accountant* shall mean an independent certified public accountant or firm of independent certified public accountants.

The term *City* shall mean the City of San Marcos, Texas.

The term *City System* shall mean and includes the existing combined waterworks and/or wastewater disposal system of the City, together with all future extensions, improvements, enlargements, and additions thereto, including, to the extent permitted by law, storm sewer and drainage and/or reclaimed water systems which are integrated with the waterworks or wastewater disposal system, and all replacements thereof. Provided that, notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term *City System* shall not include any waterworks or wastewater facilities which are declared by the Authority not to be a part of the City System, and which are hereafter acquired or constructed by the Authority with the proceeds from the issuance of "Special Facilities Bonds," which are hereby defined as being special revenue obligations of the City which are not secured by or payable from the net revenues of the City System, but which are secured by and are payable solely from special contract revenues, or payments received from the City or any other legal entity, or any combination thereof, in connection with such facilities; and such revenues or payments shall not be considered as or constitute gross revenues of the City System, unless and to the extent otherwise provided in the ordinance or ordinances authorizing the issuance of such *Special Facilities Bonds*.

The term *City Utility Bonds* shall mean the bonds, notes or other obligations issued by the City secured by a lien on and pledge of the net revenues of the City System or any part thereof regardless of lien priority including such bonds, notes or other obligations now or hereafter outstanding.

The term *Closing Date* shall mean the date of physical delivery of the Initial Bond issued pursuant to this Resolution for the payment in full by the Purchaser.

The term *Completion Date* shall mean when the Facilities have been substantially complete, the date specified in a certificate of the Authority and Project Engineer that the Project is substantially completed and ready to be placed in service.

The term *Contract* shall mean the Regional Water Supply Contract dated as of January 9, 2008, together with amendments and supplements thereto including Amendment No. 1 (which by the term of such instrument is designated as a supplement or amendment to such Contract) between the Authority and each Participating Entity, conformed copies of the Contract being attached hereto as Exhibit "E" for the purposes of identification.

The term *Credit Agreement* shall mean an Insurance Policy, a surety bond (including any supporting Insurance Agreement), a letter or line of credit or other type of enhancement issued in

support of any Bonds or Additional Bonds by a Credit Agreement Provider at the request of the Authority.

The term *Credit Agreement Provider* shall mean (i) with respect to any Credit Agreement consisting of a policy of municipal bond insurance or a surety bond, an issuer of policies of insurance insuring the timely payment of scheduled debt service on governmental obligations such as any Series of Bonds or Additional Bonds, provided that a Rating Authority having an outstanding rating on the Bonds or Additional Bonds would rate the Bonds or Additional Bonds upon delivery of the Bonds or Additional Bonds fully insured by a standard policy issued by the issuer in its highest generic rating category for such obligations; and (ii) with respect to any Credit Agreement consisting of a letter or line of credit, any financial institution, provided that a Rating Authority having an outstanding rating on the Bonds or Additional Bonds would rate the Bonds or Additional Bonds in one of its two highest generic rating categories for such obligations if the letter or line of credit proposed to be issued by such financial institution secured the timely payment of the entire principal amount of a series of Bonds or Additional Bonds and the interest thereon.

The term *Debt Service Fund* shall mean the special fund or account created and established by the provisions of Section 9(a) of this Resolution.

The term *Debt Service Requirements* shall mean as of any particular date of computation, with respect to any obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the Authority as of such date or in such period for the payment of the principal of, premium, if any, and interest (to the extent not capitalized) on such obligations; assuming, in the case of obligations without a fixed numerical rate, that such obligations bear interest calculated by (a) either (i) an interest rate equal to the average rate borne by such Bonds (or by comparable debt in the event that such Bonds have not been outstanding during the preceding 24 months) for any 24 month period ending within 30 days prior to the date of calculation, (ii) if the Bonds bear interest at tax-exempt rates, an interest rate equal to the 24 month average of the Index (as most recently published in The Bond Buyer), unless such index is no longer published in The Bond Buyer, in which case the index to be used in its place shall be that index which the Authority Representative determines most closely replicates such index as set forth in a certificate of a Authority Representative, (iii) if the Bonds bear interest at taxable rates, the index which the Authority Representative determines is an accepted market index for taxable rates, (iv) that interest rate which, in the judgment of the Authority Representative, based, to the extent possible, upon an accepted market index which corresponds with the provisions of the subject Bonds, is the average rate anticipated to be in effect with respect to such Bonds or (v) that interest rate which, in the judgment of the Authority Representative, based upon the interest rate methodology in the applicable Credit Agreement if calculating payments under a Credit Agreement, is the average rate anticipated to be in effect; and (b) that the debt service of such bonds is amortized such that annual debt service is substantially level over the remaining stated life of such bonds, and further assuming in the case of obligations required to be redeemed or prepaid as to principal prior to Stated Maturity, the principal amounts thereof will be redeemed prior to Stated Maturity in accordance with the mandatory redemption provisions applicable thereto.

The term *Defeasance Securities* shall mean (i) Federal Securities, (ii) noncallable obligations of an Authority or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the Authority or instrumentality and that, on the date the Board adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent, (iii) non-callable obligations of a state or an Authority or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the Board adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds, are rated as to investment quality by a nationally recognized investment rating firm no less than "AAA" or its equivalent, or (iv) any additional securities and obligations hereafter authorized by the laws of the State as eligible for use to accomplish the discharge of obligations such as the Bonds.

The term *Depository* shall mean an official depository bank of the Authority.

The term *Designated Trust Office* shall have the meaning ascribed to said term in Section 5(b) of this Resolution.

The term *Engineering Report* shall mean the "Final Report of the Plumbing Plan," prepared by Lockwood, Andrews & Newnan, Inc., dated September 21, 2007, as such report may be amended, modified and changed and superseded with the approval of the Authority and Sponsors, at any time prior to the execution of construction contracts for the Project or as modified and changed by change orders issued after the execution of such construction contracts; provided, however, no such change orders shall adversely affect any of the Sponsors without the consent of the Sponsors.

The term *Facilities* shall mean the facilities, wells, diversion structures, treatment plants, storage tanks, capacity rights, lines, booster pumps, and other appurtenances sufficient to produce, divert, treat and deliver the water to which the Sponsors are entitled under the Contract and any improvements, additions, or extensions to such Facilities hereafter acquired or constructed to deliver water between such places.

The term *Federal Securities* shall mean direct, non-callable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America (including Interest Strips of the Resolution Funding Corporation).

The term *Financial Obligation* shall mean (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

The term *Fiscal Year* shall mean the twelve month accounting period used by the Authority in connection with the operation of the Project, currently ending on September 30th of each year,

which may be any twelve consecutive month period established by the Authority, but in no event may the Fiscal Year be changed more than one time in any three calendar year period.

The term *Fitch* shall mean Fitch Ratings, Inc., its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating Authority, Fitch shall be deemed to refer to any other nationally recognized securities rating Authority designated by the Authority.

The term *Funds* shall mean the Debt Service Fund and Project Fund created and held pursuant to this Resolution.

The term *Government Securities* shall mean (i) direct non-callable obligations of the United States, including obligations that are unconditionally guaranteed by, the United States of America; (ii) non-callable obligations of an Authority or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the Authority or instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent; (iii) non-callable obligations of a state or an Authority or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent; or (iv) any additional securities and obligations hereafter authorized by the laws of the State as eligible for use to accomplish the discharge of obligations such as the Bonds.

The term *Interest Payment Date* shall mean the date semiannual interest is payable on the Bonds, while any of the Bonds remain Outstanding as set forth in the FORM OF BOND.

The term *IRS Code* shall mean the Internal Revenue Code of 1986, as amended.

The term *Land Interests* shall mean the easements, right-of-way, and other interests in real property necessary for the acquisition, construction, and operation of the Facilities and the Water Rights for the Project.

The term *MSRB* means the Municipal Securities Rulemaking Board.

The term *Maturity* shall mean the date on which the principal of a Bond becomes due and payable as therein and herein provided, whether at Stated Maturity, by redemption or otherwise.

The term *Moody's* shall mean Moody's Investors Service, Inc., its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating Authority, Moody's shall be deemed to refer to any other nationally recognized securities rating Authority designated by the Authority.

The term *Operation and Maintenance Expenses* shall mean all direct costs and expenses incurred by the Authority for its operation and maintenance, including but not limited to, the operation and maintenance of the Project, including (for greater certainty but without limiting the

generality of the foregoing) amounts payable under any contract with any person, including, but not limited to any federal, state, or local Authority for the right to produce, withdraw or divert and use water, any contribution or payment in lieu of taxes or any fee or charge by any government authority relating to the Authority's production, withdrawal or diversion of or sale of treated water hereunder, the costs of utilities, supervision, engineering, accounting, auditing, legal services, insurance premiums, supplies, services, and administration of the Project, Overhead Expenses, any required costs of mitigation and land management incidental to Project operation, and costs of operating, repairing, maintaining, and replacing equipment for proper operation and maintenance of the Project. The term "Operation and Maintenance Expenses" does not include depreciation charges or such portion of the above described costs to the extent such costs are paid pursuant to an agreement other than the Contract.

The term *Outstanding* shall mean when used in this Resolution with respect to Bonds means, as of the date of determination, all Bonds of any series issued and delivered pursuant to this Resolution, except:

- (1) those Bonds canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;
- (2) those Bonds for which payment has been duly provided by the Authority in accordance with the provisions of Section 30 of this Resolution by the irrevocable deposit with the Paying Agent/Registrar, or an authorized escrow agent, of money or Government Securities, or both, in the amount necessary to fully pay the principal of, premium, if any, and interest thereon to maturity or redemption, as the case may be, provided that, if such Bonds are to be redeemed, notice of redemption thereof shall have been duly given pursuant to this Resolution or irrevocably provided to be given to the satisfaction of the Paying Agent/Registrar, or waived; and
- (3) those Bonds that have been mutilated, destroyed, lost, or stolen and replacement Bonds have been registered and delivered in lieu thereof as provided in Section 5(f) of this Resolution.

The term *Overhead Expenses* shall mean the Authority's reasonable and necessary costs and expenses incurred at any time directly related to the issuance and servicing of the Bonds, the acquisition of Land Interests required for the Project, the design, permitting, financing, acquisition, construction, and ownership of the Project and any other activities required of or involving the Authority in connection with or attributable to the Project or the Bonds, including, but not limited to: (i) per diem and reimbursable expenses incurred by the Directors of the Authority for special meetings of the Authority's Board related to the Project; (ii) services of the professional, technical skilled and unskilled persons and firms engaged by or associated with the Authority, other than Authority staff personnel, together with their reimbursable expenses paid or required to be paid by the Authority; (iii) salaries of the Authority's staff attributable to the Project or the Bonds based on time expended, as documented or reasonably estimated by the President, Board of the Authority; (iv) the costs of preparing applications for and obtaining all approvals and authorizations required for the Project or the Bonds from the regulatory authorities having jurisdiction; (v) the cost of property casualty and public liability insurance incurred prior to the Completion Date; including any insurance deductible charged to or required to be paid by the Authority; provided that if the

Authority is unable to obtain such insurance on an occurrence basis, then any expense incurred by the Authority from and after the Completion Date for casualty and public liability insurance, including any insurance deductible, shall be paid by the Sponsors; (vi) all costs incurred in litigation involving or relating to the Project; and (vii) any and all other costs and expenses, including out-of-pocket expenses, incurred by the Authority attributable to the Project or the Bonds, whether enumerated above or not, and whether or not included in the definition or as a part of Project Costs.

The terms *Paying Agent/Registrar*, *Paying Agent* or *Registrar* shall mean the agent appointed pursuant to Section 5 of this Resolution or any successor to such agent.

The term *Participating Entities* shall mean with respect to the Contract, Cities of Buda, Kyle and San Marcos and Canyon Regional Water Authority.

The term *Phase 1A Project* shall mean the design and construction of facilities to interconnect the Cities of Kyle and Buda water systems. The Project will use the Phase 1A Project facilities to deliver Carrizo water into the Buda system. Facilities include a possible water pump section, pumps, ground storage tank, chlorine treatment system, yard piping necessary to receive and pump water, fee simple purchase of property for the pump station and new transmission pipeline.

The term *Phase 1B Improvements Project* shall include design, construction and equipment of multiple wells drilled and installed; the primary collection line from the well field to the treatment plant along with the individual collection lines; a sand filter water treatment plant including filters, disinfection equipment, high service pump station, and clearwell storage; plant construction in phases with Phase 1B expected to provide a treatment capacity of approximately 5 MGD, with an ultimate plant buildout of approximately 35 MGD; and transmission mains from the water treatment plant to the Project's Phase 1A infrastructure all as further set forth in the Authority's application to the Texas Water Development Board.

The term *Project* shall mean, collectively, the Land Interests and the Facilities as described in the recitals to the Contract and in the Engineering Report.

The term *Project Costs* shall mean and includes, without limitation, the following costs incurred for the Project by or on behalf of the Authority or the Sponsors: (i) the cost of acquisition of the Land Interests, including appraisals, closing costs and title insurance policies; (ii) the cost of acquisition, construction, repair, replacement, improvement or decommissioning of the Facilities, and any structure, item of equipment, or other item, used for, or in connection with, the Project; (iii) the cost of site preparation of the Land Interests, including demolition or removal of structures and improvements as necessary or incident to accomplishing the Project; (iv) the cost of engineering, legal, architectural or other related services; (v) the preparation cost of plans, specifications, studies, surveys, cost estimates, and other expenses necessary or incident to planning, providing, or financing the Project; (vi) the cost of machinery, equipment, furnishings, and facilities necessary or incident to placing the Project in operation; (vii) finance charges and interest before, during, and after construction as permitted by the laws of the State; (viii) costs incurred in connection with financing the project, including, without limitation: (1) financing, legal, accounting, financial advisory, rating Authority, and auditing fees, expenses and disbursements; (2) the cost of printing, engraving, and reproduction services; and (3) the cost of a trustee's or paying agent's initial or acceptance fee and subsequent fees; (ix) all costs, fees and expenses of litigation

of all kinds; (x) the cost of property casualty and public liability insurance; (xi) the fees and costs of the underwriters as the anticipated Purchaser of the Bonds; reimbursement of the costs previously incurred by the Sponsors with respect to the Project; and (xiii) other costs generally recognized as a part of Project construction costs.

The term *Project Engineer* shall mean such engineer or engineering firm selected by the Authority.

The term *Purchaser* shall mean the initial purchaser of the Bonds, the Texas Water Development Board.

The term *Record Date* shall mean the Business Day of each month as set forth in the FORM OF BOND.

The term *Registration Books* shall mean the books or records relating to the registration, payment and transfer or exchange of the Bonds maintained by the Paying Agent/Registrar pursuant to Section 5 of this Resolution.

The term *Registered Owner* shall mean the entity or person in whose names any of the Bonds are registered in the Registration Books.

The term *Resolution* shall mean this resolution adopted by the Board of Authority on October 28, 2020.

The term *Rule* shall mean SEC Rule 15c2-12, as amended from time to time.

The term *SEC* means the United States Securities and Exchange Commission.

The term *Series* shall mean any designated Series of Bonds issued pursuant to this Resolution.

The term *Series 2017 Bonds* shall mean the Alliance Regional Water Authority Contract Revenue Bonds (Regional Water Supply Contract Project – City of San Marcos, Texas), Series 2017C.

The term *Special Project Bonds* shall mean obligations which the Authority expressly reserves the right to issue in Section 14 of this Resolution.

The term *State* shall mean the State of Texas.

The term *Stated Maturity* shall mean, when used with respect to the Bonds, the scheduled maturity or mandatory sinking fund redemption date of a series of the Bonds.

The term *Water Rights* shall mean the right to produce, withdraw or divert water, and transport the water from the location where it is produced, withdrawn, or diverted into Caldwell County, Guadalupe County, Hays County, and the surrounding counties. "Water Rights" are a component of "Land Interests."

**EXHIBIT B**  
**FORM OF BOND**

**REGISTERED  
NO.** \_\_\_\_\_

**REGISTERED  
PRINCIPAL AMOUNT**  
\$ \_\_\_\_\_

**UNITED STATES OF AMERICA STATE OF TEXAS  
ALLIANCE REGIONAL WATER AUTHORITY  
CONTRACT REVENUE BONDS  
(REGIONAL WATER SUPPLY CONTRACT PROJECT –  
CITY OF SAN MARCOS, TEXAS), SERIES 2020C**

**BOND  
DATE:**  
November 20, 2020

**STATED  
MATURITY:**

**INTEREST  
RATE:**

**CUSIP  
NO.:**

**REGISTERED OWNER:** \_\_\_\_\_

**PRINCIPAL AMOUNT:** \_\_\_\_\_ **DOLLARS**

The Alliance Regional Water Authority (the "Authority"), a conservation and reclamation district of the State of Texas (the "State"), created by the Cities of Buda, Kyle and San Marcos, Texas and the Canyon Regional Water Authority a conservation and reclamation district and political subdivision of the State created and existing pursuant to Article XVI, Section 59 of the Texas Constitution and existing under the laws of the State, for value received, hereby promises to pay to the order of the Registered Owner specified above, or the registered assigns thereof, on the Stated Maturity date specified above, the Principal Amount specified above (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid principal amount hereof from the Bond Date, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, to the earlier of redemption or Stated Maturity, at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 of each year commencing August 15, 2021.

Principal and premium, if any, of the Bond shall be payable to the Registered Owner hereof (the "Holder") upon presentation and surrender, at a corporate trust office of the Paying Agent/Registrar executing the registration certificate appearing hereon or a successor thereof. Interest shall be payable to the Holder of this Bond (or one or more Predecessor Bonds, as defined in the Resolution hereinafter referenced) whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the last Business Day of the month next preceding each interest payment date. All payments of principal of and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. In addition,

interest may be paid by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner. The foregoing notwithstanding, so long as the Texas Water Development Board is the registered owner of 100% in aggregate principal amount of the Bonds then outstanding, payment of principal and interest on the Bonds shall be made thereto by wire transfer, at no expense to the Texas Water Development Board. Notwithstanding the foregoing, during any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, payments made to the securities depository, or its nominee, shall be made in accordance with arrangements between the Authority and the securities depository.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$43,955,000 (the "Bonds") pursuant to a resolution adopted by the governing body of the Authority (the "Resolution"), (i) FOR CONSTRUCTING, ACQUIRING, IMPROVING AND/OR EXPANDING THE PROJECT INCLUDING BUT NOT LIMITED TO THE PHASE 1B IMPROVEMENTS WATER SUPPLY PROJECT AND (ii) PAYING THE COSTS OF ISSUANCE OF THE BONDS.

The Bonds stated to mature on and after August 15, 2031 may be redeemed prior to their Stated Maturities, at the option of the Authority, in inverse order of maturity on February 15, 2031, or on any date thereafter, in whole or in part in an Authorized Denomination (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar) at the redemption price of par, together with accrued interest to the date of redemption, and upon thirty (30) days prior written notice being given by United States mail, first-class postage prepaid, to Holders of the Bonds to be redeemed, and subject to the terms and provisions relating thereto contained in the Resolution. If this Bond is subject to redemption prior to Stated Maturity and in an Authorized Denomination thereof may be redeemed, and, if less than all of the principal sum hereof is to be redeemed, there shall be issued, without charge therefor, to the Holder hereof, upon the surrender of this Bond to the Paying Agent/Registrar at its corporate trust office, a new Bond or Bonds of like Stated Maturity and interest rate in any authorized denominations provided in the Resolution for the then unredeemed balance of the principal sum hereof.

If this Bond (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Bond (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and, if money for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption is held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable hereon from and after the redemption date on the principal amount hereof to be redeemed. If this Bond is called for redemption, in whole or in part, the Authority or the Paying Agent/Registrar shall not be required to issue, transfer, or exchange this Bond within forty-five (45) days of the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance hereof in the event of its redemption in part.

The Bonds of this series are special obligations of the Authority payable from and equally and ratably secured solely by a lien on and pledge of the Bond Payments received by the Authority from the Authority pursuant to the provisions of the Contract. In the Resolution, the Authority reserves and retains the right to issue Additional Bonds, without limitation as

to principal amount but subject to any terms, conditions, or restrictions set forth in the Resolution or as may be applicable thereto under law or otherwise. The Bonds do not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the Authority or System, except with respect to the Bond Payments.

The Holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation.

Reference is hereby made to the Resolution, copies of which are on file in the corporate trust office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by his acceptance hereof hereby assents, for definitions of terms; the description and nature of the Special Payments pledged for the payment of the Bonds; the terms and conditions under which the Authority may issue Additional Bonds; the terms and conditions relating to the transfer or exchange of the Bonds; the conditions upon which the Resolution may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Authority and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be redeemed or discharged at or prior to the Stated Maturity thereof, and deemed to be no longer Outstanding thereunder; and for the other terms and provisions specified in the Resolution. Capitalized terms used herein have the same meanings assigned in the Resolution.

This Bond, subject to certain limitations contained in the Resolution, may be transferred on the Registration Books upon presentation and surrender at a corporate trust office of the Paying Agent/Registrar, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by the Holder hereof, or his duly authorized agent, and thereupon one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued to the designated transferee or transferees.

The Authority and the Paying Agent/Registrar, and any agent of either, shall treat the Holder hereof whose name appears on the Security Register (i) on the Record Date as the owner hereof for purposes of receiving payment of interest hereon, (ii) on the date of surrender of this Bond as the owner hereof for purposes of receiving payment of principal hereof at its Stated Maturity, or its redemption, in whole or in part, and (iii) on any other date as the owner hereof for all other purposes, and neither the Authority nor the Paying Agent/Registrar, or any such agent of either, shall be affected by notice to the contrary. In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Authority. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date" - which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, covenanted, and represented that all acts, conditions, and things required to be performed, exist, and be done precedent to the issuance of this Bond in order to render the same a legal, valid, and binding special obligation of the Authority have been performed,

exist, and have been done, in regular and due time, form, and manner, as required by law, and that issuance of the Bonds does not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by a lien on and pledge of the Bond Payments and as otherwise provided in this Resolution. In case any provision in this Bond or any application thereof shall be deemed invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Resolution shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Board of the Authority has caused this Bond to be duly signed with the manual or facsimile signature of the Chair or Vice Chair of the Board of the Authority and countersigned with the manual or facsimile signature of the Secretary of the Board of the Authority.

ALLIANCE REGIONAL WATER  
AUTHORITY

\_\_\_\_\_  
Chair, Board

ATTESTED:

\_\_\_\_\_  
Secretary, Board

A. Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Bond Only.

**REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS**

**OFFICE OF THE COMPTROLLER OF  
PUBLIC ACCOUNTS  
THE STATE OF TEXAS**

§  
§  
§  
§

**REGISTER NO.** \_\_\_\_\_

I HEREBY CERTIFY that this Bond has been examined and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
Of the State of Texas

B. Form of Certificate of Paying Agent/Registrar to Appear on Definitive Bonds Only:

This Bond has been duly issued under the provisions of the within-mentioned Resolution; the Bond or Bonds of the above-entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

Registered this date: \_\_\_\_\_

**BOKF, NA**  
as Paying Agent/Registrar

By: \_\_\_\_\_  
Authorized Signature

C. Form of Assignment.

**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee): \_\_\_\_\_

(Social Security or other identifying number): \_\_\_\_\_

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular. Signature guaranteed:

D. The Initial Bond of each series shall be in the form set forth in paragraph B of this Section, except that the form of a single fully registered Initial Bond shall be modified as follows:

- i) immediately under the name of the Bond(s) the headings "Interest Rate" and "Stated Maturity" shall both be completed "as shown below";

ii) the first two paragraphs shall read as follows:

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_

The Alliance Regional Water Authority (the "Authority"), a conservation and reclamation district of the State of Texas, with its principal office located in San Marcos, Texas, for value received, hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, the Principal Amount specified above on the 15th day of August in each of the years and in principal amounts and bearing interest at per annum rates in accordance with the following schedule:

| <u>Year of<br/>Stated Maturity</u> | <u>Principal<br/>Amounts (\$)</u> | <u>Interest<br/>Rates (%)</u> |
|------------------------------------|-----------------------------------|-------------------------------|
|------------------------------------|-----------------------------------|-------------------------------|

(Information to be inserted from Sections 3 and 4).

(or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amount hereof from the Bond Date, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, to Stated Maturity or prior redemption, at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15, commencing August 15, 2021 (the "Interest Payment Date").

Principal and premium, if any, of this Bond shall be payable to the Registered Owner hereof (the Holder), upon its presentation and surrender, at a corporate trust office of BOKF, NA, Dallas, Texas (the "Paying Agent/Registrar"). Interest shall be payable to the Holder of this Bond whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the last Business Day of the month next preceding each interest payment date. All payments of principal of and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder hereof.

**EXHIBIT C**

**FORM OF PROJECT FUND REQUISITION**

**PROJECT FUND REQUISITION**

DATE: \_\_\_\_\_

Alliance Regional Water Authority hereby makes this requisition pursuant to "A Resolution by the Board of the Alliance Regional Water Authority Authorizing the Issuance of Alliance Regional Water Authority Contract Revenue Bonds (Regional Water Supply Contract Project – City of San Marcos, Texas), Series 2020C; and Resolving Other Matters Incident and Relating to the Issuance, Payment, Security, Sale, and Delivery of Such Bonds" adopted by the Board of the Authority on October 28, 2020. The undersigned hereby authorizes disbursement from the Project Fund to pay Project Costs for the purposes and in the amounts as follows:

| <u>Name of Payee</u> | <u>Nature of Disbursement</u> | <u>Amount</u> |
|----------------------|-------------------------------|---------------|
|----------------------|-------------------------------|---------------|

## **EXHIBIT D**

### **CONTINUING DISCLOSURE**

#### **DESCRIPTION OF ANNUAL FINANCIAL INFORMATION**

The following information is referred to in Section 28 of this Resolution.

#### **Annual Financial Statements and Operating Data**

The financial information and operating data with respect to the City of San Marcos, Texas to be provided annually in accordance with such Section 28 are audited financial statements of the City of San Marcos, Texas.

#### **Accounting Principles**

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to above.

**EXHIBIT E**

**REGIONAL WATER SUPPLY CONTRACT**

**EXHIBIT F**

**APPROVAL CERTIFICATE**

The undersigned Authorized Representative of the City of San Marcos, Texas pursuant to the resolution (the "Resolution") authorizing the issuance of obligations designated as "Alliance Regional Water Authority Contract Revenue Bonds (Regional Water Supply Contract Project – City of San Marcos, Texas), Series 2020C" (the "Bonds") hereby approves the following terms of the Bonds:

- (i) the total principal amount of the Bonds of \$43,955,000;
- (ii) the purchase price for the Bonds is \$43,955,000 (representing the original principal amount of the Bonds);
- (iii) the interest rates and maturity schedule for the Bonds are as set forth below:

| <u>YEAR OF<br/>STATED<br/>MATURITY</u><br><u>(August 15)</u> | <u>PRINCIPAL<br/>AMOUNTS(\$)</u> | <u>INTEREST<br/>RATES(%)</u> | <u>YEAR OF<br/>STATED<br/>MATURITY</u><br><u>(August 15)</u> | <u>PRINCIPAL<br/>AMOUNTS(\$)</u> | <u>INTEREST<br/>RATES(%)</u> |
|--|----------------------------------|------------------------------|--|----------------------------------|------------------------------|
| 2022   | \$ 2,190,000                     | 0.120%                       | 2032   | \$ 2,285,000                     | 1.080%                       |
| 2023   | 2,190,000                        | 0.140                        | 2033   | 2,310,000                        | 1.230                        |
| 2024   | 2,195,000                        | 0.190                        | 2034   | 2,340,000                        | 1.290                        |
| 2025   | 2,200,000                        | 0.230                        | 2035   | 2,375,000                        | 1.360                        |
| 2026   | 2,210,000                        | 0.330                        | 2036   | 2,410,000                        | 1.410                        |
| 2027   | 2,215,000                        | 0.440                        | 2037   | 2,450,000                        | 1.450                        |
| 2028   | 2,225,000                        | 0.520                        | 2038   | 2,490,000                        | 1.490                        |
| 2029   | 2,235,000                        | 0.620                        | 2039   | 2,535,000                        | 1.520                        |
| 2030   | 2,250,000                        | 0.690                        | 2040   | 2,585,000                        | 1.550                        |
| 2031   | 2,265,000                        | 0.910                        |  |                                  |                              |

- (iv) the Bonds are subject to redemption as set forth below:

The Bonds stated to mature on and after August 15, 2031 may be redeemed prior to their Stated Maturities, at the option of the Authority, in inverse order of maturity on February 15, 2031, or on any date thereafter, in whole or in part in an Authorized Denomination (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar) at the redemption

price of par, together with accrued interest to the date of redemption, and upon thirty (30) days prior written notice being given by United States mail, first-class postage prepaid, to Holders of the Bonds to be redeemed, and subject to the terms and provisions relating thereto contained in the Resolution. If this Bond is subject to redemption prior to Stated Maturity and in an Authorized Denomination thereof may be redeemed, and, if less than all of the principal sum hereof is to be redeemed, there shall be issued, without charge therefor, to the Holder hereof, upon the surrender of this Bond to the Paying Agent/Registrar at its corporate trust office, a new Bond or Bonds of like Stated Maturity and interest rate in any authorized denominations provided in the Resolution for the then unredeemed balance of the principal sum hereof.

If this Bond (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Bond (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and, if money for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption is held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable hereon from and after the redemption date on the principal amount hereof to be redeemed. If this Bond is called for redemption, in whole or in part, the Authority or the Paying Agent/Registrar shall not be required to issue, transfer, or exchange this Bond within forty-five (45) days of the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance hereof in the event of its redemption in part; and

(v) the Bonds have been approved for issuance by the Texas Water Development Board and will be approved by the Texas Attorney General.

**EXECUTED AND DELIVERED THIS** 20th day of October, 2020.

**CITY OF SAN MARCOS, TEXAS**

Title: \_\_\_\_\_

# ALLIANCE REGIONAL WATER AUTHORITY

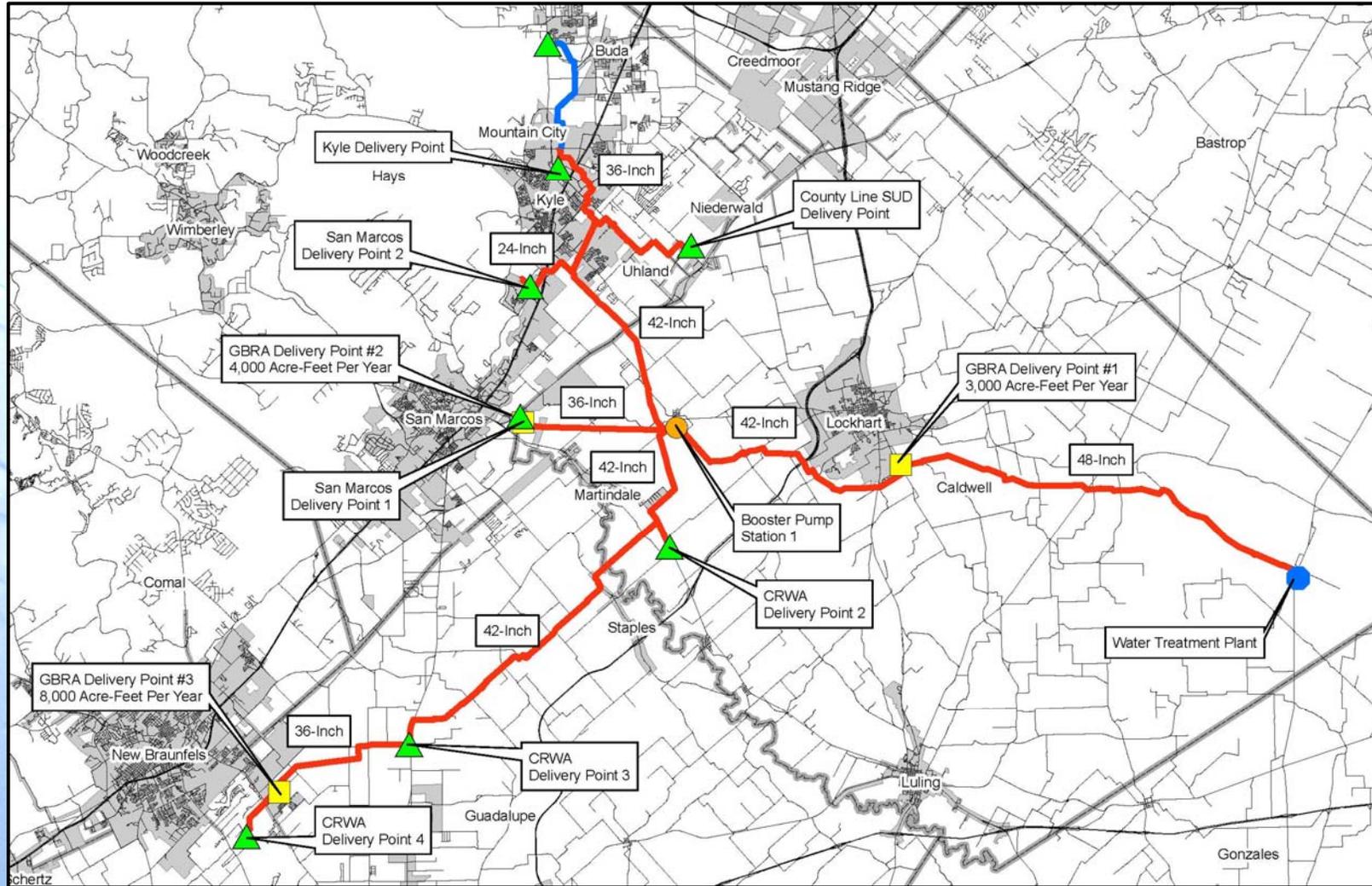
## 2020 FINANCING & PROJECT UPDATES

CITY OF SAN MARCOS  
CITY COUNCIL MEETING  
OCTOBER 20, 2020



**ALLIANCE WATER**

# PHASE 1B OVERVIEW



# PHASE 1B COMPONENTS

- Carrizo wells
- Raw water collection lines
- Water treatment plant
- Finished water transmission mains
- Booster pump stations
- Delivery to customers tanks
- Administrative building

# PROJECT STATUS

- Water Leases: ✓
- Groundwater Permits: ✓
- Project Financing: ✓
- Engineering Design: **In Progress**
- Easement Acquisition: **In Progress**
- Construction: **In Progress**

Carrizo Water to be  
Delivered in 2023

# PROJECT CHALLENGES

- **Easement Acquisition**
  - Approximately 300 easements
- **Environmental Clearance**
  - Corps of Engineers Archaeological Approval
- **Cost Opinions**
  - Material and labor costs have been volatile
  - Result is higher estimates than originally budgeted

# STATE FUNDING

- Three debt issuances coinciding with project phasing.
- TWDB SWIFT funding is issued based on the State's credit rating with an additional subsidy

|                  | 2017       | 2019       | 2020*       | Total       |
|------------------|------------|------------|-------------|-------------|
| ARWA Total       | \$31.93 MM | \$85.88 MM | \$122.58MM  | \$240.41 MM |
| San Marcos Share | \$11.45 MM | \$30.8 MM  | \$43.955 MM | \$86.205 MM |

\* Includes \$27 million more than originally projected for ARWA, which equates to \$9.68 million more for San Marcos.

# STATE FUNDING

- Texas Water Development Board (TWDB) managing the \$2 billion State Water Implementation Fund of Texas (SWIFT) approved by voters in November 2013.
- Same fund used by Alliance Water in 2015, 2017 & 2019

| TWDB – SWIFT Rate Subsidy Information |               |           |           |                    |                  |                   |
|---------------------------------------|---------------|-----------|-----------|--------------------|------------------|-------------------|
| Debt Term (yrs)                       | State Subsidy | 2017 Rate | 2019 Rate | Budgeted 2020 Rate | Actual 2020 Rate | Interest Savings* |
| 20                                    | 35%           | 1.85%     | 1.52%     | 1.78%              | 1.15%            | \$3,272,000       |

\* Based on \$43.955 million capital project versus budgeted rates.

# TOTAL DEBT SERVICE

| Total Principle & Interest Comparison Actual to Budgeted |              |              |               |                      |
|--|--------------|--------------|---------------|----------------------|
|  | 2017         | 2019         | 2020*         | Total                |
| <b>Budgeted</b>  | \$14,885,919 | \$41,000,178 | \$46,704,125  | <b>\$102,590,222</b> |
| <b>Actual</b>  | \$13,823,536 | \$36,402,003 | \$49,549,117  | <b>\$99,774,657</b>  |
| <b>Difference</b>  | \$1,062,383  | \$4,598,175  | \$(2,844,992) | <b>\$2,815,565</b>   |

\* Savings even when considering additional \$9.685 million issued above budgeted amount.



**TOTAL SAVINGS**

- Even while issuing more debt than expected, Alliance Water has been able to achieve annual debt service savings of \$140,000 for San Marcos.

## NEXT STEPS

- Approval of the Financing Agreement between Alliance Water and TWDB by mid-September stating debt service option.
- TWDB sells bonds in early-October
- **Councils to consider approval of Resolution issuing debt in October 2020**
- Alliance Water closes on loans on November 20, 2020
- 1<sup>st</sup> Payment (interest only) is made in August 2021

# QUESTIONS

[www.alliancewater.org](http://www.alliancewater.org)

**Graham Moore, P.E.**  
**Executive Director**

**(512) 294-3214**

**[gmoore@alliancewater.org](mailto:gmoore@alliancewater.org)**

**PRIVATE PLACEMENT MEMORANDUM DATED NOVEMBER 20, 2020**

**NEW ISSUE BOOK-ENTRY-ONLY**

*On the date of initial delivery of the Obligations (defined below), Issuer Bond Counsel (defined on page 2) will render its opinion substantially in the form attached in "APPENDIX C – FORM OF OPINION OF BOND COUNSEL."*

**\$43,955,000**

**ALLIANCE REGIONAL WATER AUTHORITY  
CONTRACT REVENUE BONDS (REGIONAL WATER SUPPLY CONTRACT  
PROJECT-CITY OF SAN MARCOS, TEXAS), SERIES 2020C  
(THE "OBLIGATIONS")**

**Dated: November 20, 2020**

**Due: August 15**

**Interest accrues from the Delivery Date shown below**

**Interest Date:** Interest on the Obligations will be payable on August 15 and February 15 each year, commencing August 15, 2021 (each an "Interest Payment Date"). The Obligations will bear interest at the rates per annum set forth in "APPENDIX A – MATURITY SCHEDULE."

**Record Date:** The last business day of the calendar month next preceding each Interest Payment Date.

**Date Interest Accrues:** Each Bond shall bear interest from the Delivery Date thereof or the most recent Interest Payment Date to which interest has been paid or provided for at the rate set forth, such interest payable semiannually on August 15 and February 15 of each year until the earliest of maturity or prior redemption, commencing on August 15, 2021.

**Redemption:** The Bonds having stated maturities on and after August 15, 2031, in whole or in part, and if less than in whole, in inverse order of the maturities outstanding at the time of such redemption, before their respective scheduled maturity dates, on February 15, 2031, or on any date thereafter, at a price equal to the principal amount of the Bonds called for redemption plus accrued interest to the date of redemption. See "THE OBLIGATIONS – Redemption Provisions" herein.

**Authorized Denominations:** The Obligations are being issued as fully registered bonds in denominations of \$5,000, or any integral multiple thereof.

**Paying Agent/Registrar/Registrar:** The paying agent ("Paying Agent/Registrar/Registrar") for the Obligations is BOKF, NA, Dallas, Texas.

**Book-Entry-Only System:** Upon initial issuance, the ownership of the Obligations will be registered in the registration books of the Issuer kept by the Paying Agent/Registrar, in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC") to which principal, redemption premium, if any, and interest payments on the Obligations will be made. The purchasers of the Obligations will not receive physical delivery of bond certificates. Principal of, interest, and premium if any, on the Obligations will be payable at the designated office of the Paying Agent/Registrar in Dallas, Texas as the same become due and payable.

**Issuer:** Alliance Regional Water Authority

**Official Action:** Resolution dated October 28, 2019.

**Purpose:** See "APPENDIX B – OFFICIAL ACTION."

**Security for the Obligations:** See APPENDIX B – OFFICIAL ACTION."

**Ratings:** See "OTHER INFORMATION – Ratings"

**Delivery Date:** November 20, 2020.

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**See "APPENDIX A – MATURITY SCHEDULE" for Principal Amounts, Maturities, Interest Rates,  
Prices or Yields, and Initial CUSIP Numbers**

---

**BOARD OF DIRECTORS**

| <u>Directors/Board Members</u>   | <u>District</u>                 |
|----------------------------------|---------------------------------|
| Chris Betz<br>Chair              | Canyon Regional Water Authority |
| Jane Hughson<br>Vice Chair       | City of San Marcos              |
| James Earp<br>Secretary          | City of Kyle                    |
| Blake Neffendorf<br>Treasurer    | City of Buda                    |
| Tom Taggart<br>Board Member      | City of San Marcos              |
| Mark Rockeymoore<br>Board Member | City of San Marcos              |
| Tim Samford<br>Board Member      | City of Kyle                    |
| Tracy Scheel<br>Board Member     | City of Kyle                    |
| Melissa Neel<br>Board Member     | City of San Marcos              |
| Jon Clack<br>Board Member        | City of San Marcos              |
| Pat Allen<br>Board Member        | Canyon Regional Water Authority |
| Humberto Ramos<br>Board Member   | Canyon Regional Water Authority |
| Mike Taylor<br>Board Member      | Canyon Regional Water Authority |

**ADMINISTRATIVE STAFF**

| <u>Name</u>        | <u>Position</u>    |
|--------------------|--------------------|
| Graham Moore, P.E. | Executive Director |

**CONSULTANTS AND ADVISORS**

|                         |  |
|-------------------------|--|
| Auditors .....          | Atchley & Associates LLP<br>Austin, Texas          |
| Bond Counsel .....      | McCall, Parkhurst & Horton L.L.P.<br>Austin, Texas |
| Financial Advisor ..... | Specialized Public Finance Inc.<br>Austin, Texas   |

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**PRIVATE PLACEMENT MEMORANDUM**  
**relating to**

**\$43,955,000**

**ALLIANCE REGIONAL WATER AUTHORITY**  
**CONTRACT REVENUE BONDS (REGIONAL WATER SUPPLY CONTRACT**  
**PROJECT-CITY OF SAN MARCOS, TEXAS), SERIES 2020C**  
**(the “Obligations”)**

**INTRODUCTION**

This Private Placement Memorandum, including the cover page and appendices, contains brief descriptions of the Issuer, provides certain information with respect to the issuance by the Issuer, and summaries of certain provisions of the “Obligations” pursuant to the Official Action. Except as otherwise set forth herein, capitalized terms used but not defined in this Private Placement Memorandum have the meanings assigned to them in the Official Action. See “APPENDIX B – FORM OF OFFICIAL ACTION” attached hereto.

APPENDIX A contains the maturity schedule for the Obligations. APPENDIX B contains the Official Action and a description of the purpose for the proceeds of the Obligations. APPENDIX C contains a copy of the proposed opinion of Bond Counsel with respect to the Obligations. The summaries of the documents contained in the forepart of this Private Placement Memorandum are not complete or definitive, and every statement made in this Private Placement Memorandum concerning any provision of any document is qualified by reference to such document in its entirety.

**THE OBLIGATIONS**

**General Description**

The Obligations are being issued in the aggregate principal amount set forth in APPENDIX A of this Private Placement Memorandum and will mature and be subject to redemption prior to maturity as described therein. The Obligations are being issued as fully registered bonds in denominations of **\$5,000**, or any integral multiple thereof. The Obligations will be dated November 20, 2020 and will mature on the dates referenced thereon, and will bear interest at the rates per annum set forth in “APPENDIX A – MATURITY SCHEDULE.”

Interest on the Obligations is payable semiannually on each Interest Payment Date, and will be calculated on the basis of a 360-day year consisting of twelve 30-day months. Principal of and the redemption price with respect to the Obligations will be payable to the Owners upon presentation and surrender at the designated office of the Paying Agent/Registrar.

**Purpose**

See “APPENDIX B – FORM OF OFFICIAL ACTION.”

**Authority for Issuance**

The Obligations are issued pursuant to the Constitution and the general laws of the State of Texas, including the Texas Special District Local Laws Code, Chapter 11010 (the “Act”); and the Official Action adopted by the Issuer.

**Security for the Obligations**

See “APPENDIX B – FORM OF OFFICIAL ACTION.”

**Redemption Provisions**

The Bonds having stated maturities on and after August 15, 2031, in whole or in part, and if less than in whole, in inverse order of the maturities outstanding at the time of such redemption, before their respective scheduled

maturity dates, on February 15, 2031, or on any date thereafter, at a price equal to the principal amount of the Bonds called for redemption plus accrued interest to the date of redemption.

### **Book-Entry-Only System**

*The information in this caption concerning The Depository Trust Company, New York, New York (“DTC”) and DTC’s book entry system has been obtained from DTC and the Issuer makes no representation or warranty nor takes any responsibility for the accuracy or completeness of such information.*

DTC will act as securities depository for the Obligations. The Obligations will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of the Obligations and deposited with DTC. See “APPENDIX B – FORM OF OFFICIAL ACTION.”

DTC is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instrument (from over 100 countries) that DTC’s participants (the “Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions, in deposited securities, through electronic computerized book entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearance Corporation, and Fixed Income Clearance Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of “AA+.” The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

## **TAX MATTERS**

### **Opinion**

Bond Counsel will deliver its opinion on the date of delivery of the Obligations substantially in the form as attached in “APPENDIX C – FORM OF OPINION OF BOND COUNSEL.”

## **OTHER INFORMATION**

### **Settlement of Purchase of Obligations**

The Texas Water Development Board (the “Board”) and the Issuer intend for the delivery of the Obligations to be facilitated through the book-entry-only system of DTC. See “THE OBLIGATIONS – Book-Entry-Only System.” In connection with the delivery of the Obligations, a settlement agent may be used to effect the delivery of the Obligations. If such a settlement agent is used, such settlement agent (i) is being used solely to facilitate book-entry delivery of the Obligations, (ii) will be acting solely as a “Clearing DTC Participant” and not as an “underwriter” (each as defined in Section 2(a)(1) of the U.S. Securities Act of 1933, as amended, (iii) is not acting as a fiduciary or municipal advisor to the Board or the Issuer with regard to the Obligations and, accordingly, has no fiduciary duty to either the Board or the Issuer under federal or state securities laws, and therefore is not required by federal or state law to act in the best interests of the Board or the Issuer, (iv) in providing information to either the Board or the Issuer, is not providing “advice” within the meaning of Section 15B of the Securities Exchange Act of 1934, as amended, and that the information provided has not been relied on by either the Board or the Issuer in the issuance of the Obligations and (v) has not provided any legal, accounting, regulatory or tax advice to the Issuer.

## **Forward-Looking Statements**

The statements contained in this Private Placement Memorandum, including the cover page, appendices, and any other information or documents provided by the Issuer, that are not purely historical, are forward-looking statements, including statements regarding the Issuer's expectations, hopes, intentions, or strategies regarding the future. Holders and beneficial owners of the Obligations have placed reliance on forward-looking statements. All forward-looking statements included in this Private Placement Memorandum are based on information available to the Issuer on the date hereof. It is important to note that the Issuer's actual results could differ materially from those in such forward-looking statements.

## **Ratings**

No application has been made to any ratings agency or municipal bond insurance company for qualification of the Obligations for ratings or municipal bond insurance, respectively.

## **LITIGATION**

### **General**

On the date of delivery of the Obligations to the initial purchasers thereof, the Issuer will execute and deliver a certificate to the effect that, except as disclosed herein, no litigation of any nature has been filed or is pending, as of that date, to restrain or enjoin the issuance or delivery of the Obligations or which would affect the provisions made for their payment or security or in any manner questioning the validity of the Obligations.

### **The Issuer**

There is no litigation, proceeding, inquiry, or investigation pending by or before any court or other governmental authority or entity (or, to the best knowledge of the Issuer, threatened) that adversely affects the power, authority or obligation of the Issuer to deliver the Obligations, the security for, or the validity of, the Obligations or the financial condition of the Issuer.

## **CONTINUING DISCLOSURE OF INFORMATION**

In the Official Action, the Issuer has made the following agreement for the benefit of the holders and beneficial owners of the Obligations. The Issuer is required to observe the agreement for so long as it remains obligated to advance funds to pay the Obligations. Under the agreement, the Issuer will be obligated to provide certain updated financial information and operating data, and timely notice of specified material events, to the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access System. See "APPENDIX B – FORM OF OFFICIAL ACTION."

### **Compliance with Prior Undertakings**

During the last five years, the Issuer has complied in all material respects with all continuing disclosure agreements made by it in accordance with the Rule.

## **MISCELLANEOUS**

Any statements made in this Private Placement Memorandum involving matters of opinion or of estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates will be realized. Neither this Private Placement Memorandum nor any statement that may have been made verbally or in writing is to be construed as a contract with the owners of the Obligations.

The information contained above is neither guaranteed as to accuracy or completeness nor to be construed as a representation by the Issuer. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Private Placement Memorandum nor any sale made hereunder is to create, under any circumstances, any implication that there has been no change in the affairs of the Issuer from the date hereof.

The Private Placement Memorandum is submitted in connection with the sale of the securities referred to herein to the Texas Water Development Board on the Delivery Date and may not be reproduced or used, as a whole or in part, for any other purpose.

#### **ADDITIONAL INFORMATION**

The Private Placement Memorandum speaks only as of its date and the information contained herein is subject to change. Descriptions of the Obligations and the Official Action and any other agreements and documents contained herein constitute summaries of certain provisions thereof and do not purport to be complete.

**APPENDIX A**

**MATURITY SCHEDULE**

| August 15<br>Maturity | Principal<br>Amount | Rate   | Initial<br>Yield | CUSIP<br>Numbers |
|-----------------------|---------------------|--------|------------------|------------------|
| 2022                  | \$ 2,190,000        | 0.120% | 0.120%           |                  |
| 2023                  | 2,190,000           | 0.140% | 0.140%           |                  |
| 2024                  | 2,195,000           | 0.190% | 0.190%           |                  |
| 2025                  | 2,200,000           | 0.230% | 0.230%           |                  |
| 2026                  | 2,210,000           | 0.330% | 0.330%           |                  |
| 2027                  | 2,215,000           | 0.440% | 0.440%           |                  |
| 2028                  | 2,225,000           | 0.520% | 0.520%           |                  |
| 2029                  | 2,235,000           | 0.620% | 0.620%           |                  |
| 2030                  | 2,250,000           | 0.690% | 0.690%           |                  |
| 2031                  | 2,265,000           | 0.910% | 0.910%           |                  |
| 2032                  | 2,285,000           | 1.080% | 1.080%           |                  |
| 2033                  | 2,310,000           | 1.230% | 1.230%           |                  |
| 2034                  | 2,340,000           | 1.290% | 1.290%           |                  |
| 2035                  | 2,375,000           | 1.360% | 1.360%           |                  |
| 2036                  | 2,410,000           | 1.410% | 1.410%           |                  |
| 2037                  | 2,450,000           | 1.450% | 1.450%           |                  |
| 2038                  | 2,490,000           | 1.490% | 1.490%           |                  |
| 2039                  | 2,535,000           | 1.520% | 1.520%           |                  |
| 2040                  | 2,585,000           | 1.550% | 1.550%           |                  |

**APPENDIX B**

**FORM OF OFFICIAL ACTION**

**APPENDIX C**

**FORM OF OPINION OF BOND COUNSEL**



## Legislation Text

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**File #:** Res. 2020-225R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-225R, approving an interlocal agreement with the Canyon Regional Water Authority for the treatment and transmission of water from the Canyon Regional Water Authority Hays-Caldwell Water Treatment Plant; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** Public Services Water/Wastewater - Tom Taggart - Director

**Amount & Source of Funding**

**Funds Required:** \$7,918,624.00

**Account Number:** Funds to come from CIP and Impact Fees

**Funds Available:** Click or tap here to enter text.

**Account Name:** Click or tap here to enter text.

**Fiscal Note:**

**Prior Council Action:** Click or tap here to enter text.

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Sustainability

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.

Core Services

Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Water Master Plan

**Background Information:**

In an interlocal agreement with Texas State University, the City negotiated and secured for 99 years 1,117 acre-feet of water rights in the San Marcos River in exchange for reclaimed water to be used by the University. The City also owns a 150 AF right purchased in 2002. It is staff's intention to amend the water rights permit with the Texas Commission on Environmental Quality (TCEQ) to allow the City to withdraw the water at the CRWA Hays-Caldwell Water Treatment Plant in Martindale for treatment and transmission back into the City's water distribution system. This contract with CRWA will provide for the City's right to treatment capacity for the City's allocated surface water rights from the San Marcos River at the CRWA's Hays-Caldwell Water Treatment Plant. Adequate capacity will be secured in the contract by the City's funding of the required plant expansion and buy in to existing plant infrastructure. This expense is 3-5 times less expensive than alternate plant expansion and separate intake structures options. Funding for the project elements contained within this agreement are a combination of City issued debt and impact fees. Project C757 was approved for FY2021 in the amount of \$5,146,575. Impact fees in the amount of \$2,765,859 were anticipated and are available for the remaining balance and were not included in the CIP.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends approval of the contract.

**RESOLUTION NO. 2020-651R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN INTERLOCAL AGREEMENT WITH THE CANYON REGIONAL WATER AUTHORITY FOR THE TREATMENT AND TRANSMISSION OF WATER FROM THE CANYON REGIONAL WATER AUTHORITY HAYS-CALDWELL WATER TREATMENT PLANT; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The attached Interlocal Agreement (the “Agreement”) with the Canyon Regional Water Authority is approved.

**PART 2.** The City Manager or his designee is authorized to execute the Agreement on behalf of the City.

**PART 4.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on October 20, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

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AMENDED AND RESTATED  
REGIONAL (HAYS/CALDWELL COUNTIES AREA)  
WATER SUPPLY AND TREATMENT CONTRACT

---

\_\_\_\_\_, 2020

---

by and among

CANYON REGIONAL WATER AUTHORITY

and

COUNTY LINE WATER SUPPLY SPECIAL UTILITY DISTRICT,  
CRYSTAL CLEAR WATER SUPPLY SPECIAL UTILITY DISTRICT,  
MARTINDALE WATER SUPPLY CORPORATION,  
MAXWELL WATER SUPPLY SPECIAL UTILITY DISTRICT, and  
CITY OF SAN MARCOS, TEXAS

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**AMENDED AND RESTATED REGIONAL (HAYS/CALDWELL COUNTIES AREA)  
WATER SUPPLY AND TREATMENT CONTRACT**

THIS AMENDED AND RESTATED REGIONAL (HAYS/CALDWELL COUNTIES AREA) WATER SUPPLY AND TREATMENT CONTRACT (this “Amended and Restated Contract”) dated as of the \_\_\_ day of \_\_\_\_\_, 2020 (the “Contract Date”), amending and restating that certain Regional (Hays/Caldwell Counties Area) Taxable Water Supply Contract dated August 1, 1998, as amended (the “Original Contract”), is by and among the CANYON REGIONAL WATER AUTHORITY, a regional water authority created under and essential to accomplish the purposes of Article XVI, Section 59 of the Constitution of the State of Texas, and the hereinafter defined Authority Act (the “Authority”), and:

- COUNTY LINE SPECIAL UTILITY DISTRICT, a special utility district organized pursuant to Texas Water Code, Chapters 49 and 65 (“County Line SUD”);
- CRYSTAL CLEAR SPECIAL UTILITY DISTRICT, a special utility district organized pursuant to Chapter 7206 of the Texas Special Districts Local Laws Code (“Crystal Clear SUD”);
- MAXWELL SPECIAL UTILITY DISTRICT, a special utility district organized pursuant to Chapter 7222 of the Texas Special Districts Local Laws Code (“Maxwell SUD”);
- MARTINDALE WATER SUPPLY CORPORATION, a Texas water supply corporation, organized originally pursuant to Texas Revised Civil Statutes Annotated Article 1434a, as amended (“Martindale WSC,” and, together with County Line SUD, Crystal Clear SUD and Maxwell SUD, the “Original Participating Members,” which, together with any Additional Participating Members as hereinafter defined, are collectively or individually referred to herein as “Participating Members”); and
- CITY OF SAN MARCOS, TEXAS, a Texas home-rule municipality (the “City,” and, together with the Participating Members, the “Contracting Parties”).

**P R E A M B L E :**

WHEREAS, pursuant to applicable law, and particularly Article XVI, Section 59 of the Texas Constitution and the laws of the State of Texas (the “State”), particularly Chapter 670, Acts of the 71st Legislature, Regular Session, 1989, as amended (“the Authority Act”) and Chapter 791 of the Texas Government Code, as amended (the “Interlocal Cooperation Act”), the Authority is empowered to purchase, own, hold, lease, and otherwise acquire sources of a potable water supply; to build, operate, and maintain facilities for the treatment and transportation of water; to sell potable water to local governments, water supply corporations, and other persons in the State of Texas; and to protect, preserve, and restore the purity and sanitary condition to water in the Authority; and

WHEREAS, the Authority Act also authorizes the Authority, acting through its Board of Trustees (the “Board”) to issue revenue bonds to finance such projects, payable solely from the

revenues derived from payments to be made to the Authority by the participating members and other customers for the purpose of defraying the cost of financing, acquiring, and constructing the projects; and

WHEREAS, pursuant to the provisions of the Interlocal Cooperation Act and the other laws of the State, the Authority and the Original Participating Members have previously entered into the Original Contract, as amended, as a taxable take-or-pay contract pursuant to which the Authority agreed to plan, design, acquire, construct, finance, and refinance treatment facilities, water supply pipelines, booster pumps, other appurtenances, and necessary easements and other interests in land, including water rights acquisitions (the “Original Project”) and pursuant to such terms the Original Participating Members would agree to make payments to or on behalf of the Authority in amounts sufficient to meet all of the Authority’s obligations relating to bonds issued to finance the Original Project and to operate and maintain the Original Project; and

WHEREAS, the Board has previously approved and issued, upon the request of the Original Participating Members, the following series of revenue bonds pursuant to the Original Contract to finance (or refinance) the costs of the Original Project: (i) “Taxable Contract Revenue Bonds (Hays/Caldwell Counties Area Project), Series 1999” (the “Series 1999 Bonds”); (ii) “Taxable Contract Revenue Bonds (Hays/Caldwell Counties Area Project), Series 2001” (the “Series 2001 Bonds”); (iii) “Original Contract Revenue Bonds (Hays/Caldwell Counties Area Project), Series 2003” (the “Series 2003 Bonds”); (iv) “Taxable Contract Revenue Refunding Bonds (Hays/Caldwell Counties Area Project), Series 2005” (the “Series 2005 Bonds”); and (v) “Taxable Contract Revenue Bonds (Hays/Caldwell Counties Area Project), Series 2017” (the “Series 2017 Bonds”); and

WHEREAS, the Board has previously approved and issued, upon the request of County Line SUD, Crystal Clear SUD, and Maxwell SUD, its “Taxable Contract Revenue Bonds (San Marcos River Rights Project), Series 2008” (the “Series 2008 Bonds” or “Special Project Bonds”) in an initial amount of \$3,200,000 (of which \$2,400,000 is currently outstanding) pursuant to the Original Contract for the purposes of financing the acquisition of certain San Marcos River water rights for the three Participating Members listed above;

WHEREAS, the Series 2003 Bonds, Series 2005 Bonds, and Series 2017 Bonds are currently outstanding in the aggregate principal amount of \$8,400,000 (the “Outstanding Bonds”); and

WHEREAS, the City and Participating Members have requested that the Authority expand the Original Project from a capacity of 2,908 acre feet to an increased capacity of 4,468 acre feet (the “2020 Project”, and together with the Original Project, the “Project”) which will allow the Contracting Parties the ability to purchase treated water from the Authority; and

WHEREAS, the City will make a cash contribution to the Authority in the amount of \$7,918,624, which amount represents a City contribution to the Original Project (\$2,772,049) and a City Contribution to the 2020 Project (\$5,146,575) (which includes a City contribution to “pay down” the cost of the 2020 Project (\$511,593) so that the Series 2021 Bonds (as defined herein) can be issued on a tax-exempt basis); and

WHEREAS, the anticipated expansion of the Original Project, being the 2020 Project, will cost approximately \$17,500,000 and will necessitate that the Authority issue approximately \$12,355,000 in tax-exempt, new money contract revenue bonds (the “Series 2021 Bonds”); and

WHEREAS, the City is requesting to purchase a right to use the hereinafter defined System, including the 2020 Project, to purchase treated water from the Authority; and

WHEREAS, to memorialize the terms pursuant to which the 2020 Project is financed by the Authority through participation in the 2020 Project by the Participating Members and the purchase of rights to the 2020 Project by the City after taking into effect the City’s purchase of capacity rights in the System, the Parties hereto now desire to enter into this Amended and Restated Contract; and

WHEREAS, the Authority agrees that the Contracting Parties shall continue to hold and possess their respective Certificates of Convenience and Necessity issued by the Commission, shall continue to own and operate their respective water pumping, storage, distribution, facilities, and any respective water treatment facilities currently owned by each of the Contracting Parties; and

WHEREAS, this Amended and Restated Contract shall constitute an interlocal cooperative agreement as authorized pursuant to the Interlocal Cooperation Act; and

WHEREAS, the adoption of this Amended and Restated Contract is hereby found and determined to be in the best interest of the Authority, its customers, the Participating Members, the City and their respective residents and customers;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set forth, the Authority and each of the Contracting Parties agree and contract as follows:

## **ARTICLE I**

### **Definitions**

#### **Section 1.01. Definitions.**

The following terms and expressions as used in this Amended and Restated Contract, unless the context clearly shows otherwise, shall have the following meanings:

“2020 Project” means the costs to finance, refinance, acquire, and construct treatment facilities, water supply pipelines, booster pumps, other appurtenances, and necessary easements and other interests in land, including water rights acquisitions, including all Project Costs, to expand the Original Project from a capacity of 2,908 acre feet to an increased capacity of 4,468 acre-feet as further described in Exhibit A attached hereto.

“Additional Participating Member(s)” means any entity or entities hereafter agreeing pursuant to Section 6.01 of this Amended and Restated Contract to be bound by the terms of this Amended and Restated Contract, as it may be amended from time to time.

“Adjusted Annual Payment” means the Annual Payment as adjusted by the Board during or after an Annual Payment Period, as provided by this Amended and Restated Contract.

“Amended and Restated Contract” means this Amended and Restated Regional (Hays/Caldwell Counties Area) Water Supply and Treatment Contract, as initially executed and as it may be amended from time to time.

“Annual City Payment” means the amount of money to be paid to the Authority by the City, during each Annual Payment Period, for the City Operation and Maintenance Expenses.

“Annual Payment” means the amount of money to be paid to the Authority by each Participating Member during each Annual Payment Period as its share of the Annual Requirement.

“Annual Payment Period” means the Authority’s fiscal year, which currently begins on October 1 of each calendar year and ends on September 30 of the next following calendar year, but which may be any twelve consecutive month period fixed by the Authority; the first Annual Payment Period under this Amended and Restated Contract is anticipated to be the period of October 1, 2020, through September 30, 2021.

“Annual Requirement” means, during an Annual Payment Period, the total amount required from the Participating Members to pay all Participating Members Operation and Maintenance Expenses of the Authority and the Project and all costs and payments due and payable for the amortization of the Bonds.

“Authority” means the Canyon Regional Water Authority, a regional water authority created under and essential to accomplish the purposes of Article XVI, Section 59 of the Constitution of the State of Texas created in accordance with the Authority Act. Except as otherwise noted herein, actions required or permitted to be taken by the Authority under this Amended and Restated Contract may be taken by the General Manager on behalf of the Authority.

“Authority Act” means Chapter 670, Acts of the 71st Legislature, Regular Session, 1989, as amended.

“Board” means the governing body of the Authority.

“Bond Resolution” means any resolution or other financing documents of the Authority which authorizes any Bonds.

“Bonds” means all bonds, notes, or other debt obligations payable from and secured, in whole or in part, from the payments to the Authority under the Original Contract or this Amended and Restated Contract and the interest thereon, previously issued or hereafter issued by the Authority to finance or refinance the costs to acquire, construct, and equip the Project, and/or all bonds, notes, or other obligations issued subsequently to finance or refinance the costs to improve and extend the Project, and any bonds, notes or other obligations issued to refund any Bonds.

“City” means the City of San Marcos, Texas.

“City Operation and Maintenance Expenses” means that portion of the Operations and Maintenance Expenses allocated to the City pursuant to Section 5.02 herein.

“Code” means the Internal Revenue Code of 1986, and any amendments thereto, as in force and effect on the date of delivery of any series of Bonds.

“Commission” means the Texas Commission on Environmental Quality or any successor entity thereto.

“Contracting Parties” means the Participating Members and the City.

“Credit Agreement” means any credit agreement, as defined in and authorized by the provisions of Chapter 1371, Texas Government Code, as amended, which the Authority enters into relating to its obligations with respect to the Bonds.

“EMMA” means the MSRB’s Electronic Municipal Market Access system, accessible by the general public, without charge, on the internet through the uniform resource locator (URL) <http://www.emma.msrb.org>.

“Financial Obligation” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Force Majeure” means such term as it is defined in Section 9.01 of this Amended and Restated Contract.

“GBRA Contract” means that certain water purchase contract entered into by and between the Authority and the Guadalupe Blanco River Authority dated as of June 16, 1999, as may be amended from time to time.

“General Manager” means the general manager of the Authority’s operations, including any party or entity that the Authority enters into a management contract to provide these services.

“Land Interests” means the easements, right-of-way, and other interests in real property necessary for the acquisition, construction, and operation of the Project.

“MSRB” means the Municipal Securities Rulemaking Board and any successor to its duties.

“Operation and Maintenance Expenses” means, during an Annual Payment Period, all direct costs and expenses incurred by the Authority for its operation and maintenance, including but not limited to, the operation and maintenance of the Project, including (for greater certainty but without limiting the generality of the foregoing) amounts payable under the GBRA Contract and/or any contract with any federal, state, or local agency for the construction, operation, and/or water storage rights or other interests in water in Canyon Lake or other source of raw water, any

contribution or payment in lieu of taxes or any fee or charge by any government authority (including Contracting Parties) relating to the Authority's transmission or sale of treated water hereunder, the costs of utilities, supervision, engineering, accounting, auditing, legal services, insurance premiums, supplies, services, and administration of the Project, Overhead Expenses, and costs of operating, repairing, maintaining, and replacing equipment for proper operation and maintenance of the Project, including an amount to fund a special reserve for the Operation and Maintenance Expenses or for additional capital improvements to the Project; the total amount to be accumulated for such operating and additional capital improvements reserve shall not exceed 25% of the annual Operation and Maintenance Expenses (estimated to be approximately three (3) months' expenses). The term "Operation and Maintenance Expenses" does not include depreciation charges or such portion of the above-described costs to the extent such costs are paid pursuant to an agreement other than this Amended and Restated Contract. "Operation and Maintenance Expenses" include the "Participating Members Operation and Maintenance Expenses" and the "City Operation and Maintenance Expenses."

"Original Contract" means that Regional (Hays/Caldwell Counties Area) Taxable Water Supply Contract entered into by the Authority and the Original Participating Members dated August 1, 1998, as amended by an Amendment dated May 12, 2003, an Amendment No. 2 dated November 1, 2003, and as further amended an Amendment date No. 3 dated February 28, 2008.

"Original Participating Members" means County Line SUD, Crystal Clear SUD, Martindale WSC, and Maxwell SUD.

"Overhead Expenses" means the Authority's reasonable and necessary costs and expenses incurred and directly related to the issuance and servicing of the Bonds, the acquisition of Land Interests required for the Project, the design, permitting, financing, acquisition, construction, and ownership of the Project and any other activities required of or involving the Authority in connection with or attributable to the Project or the Bonds, including, but not limited to:

(a) per diem and reimbursable expenses incurred by the Board for special meetings of the Board related to the Project,

(b) services of the professional, technical skilled and unskilled persons and firms engaged by or associated with the Authority, other than Authority staff personnel, together with their reimbursable expenses paid or required to be paid by the Authority;

(c) salaries of the Authority's staff attributable to the Project or the Bonds based on time expended, as documented or reasonably estimated by the General Manager of the Authority, times an overhead factor of two (2), which factor shall be subject to adjustment by the Authority from time to time in response to actual or reasonably projected overhead expenses of the Authority;

(d) the costs of preparing applications for and obtaining all approvals and authorizations required for the Project or the Bonds from the regulatory authorities having jurisdiction;

(e) the cost of property casualty and public liability insurance; including any insurance deductible charged to or required to be paid by the Authority;

(f) all costs incurred in litigation involving or relating to the Project; and

(g) any and all other reasonable and necessary costs and expenses, including out-of-pocket expenses, incurred by the Authority attributable to the Project or the Bonds, whether enumerated above or not and whether or not included in the definition or as a part of Project Costs.

“Original Project” means the costs to finance, refinance, acquire, and construct treatment facilities, water supply pipelines, booster pumps, other appurtenances, and necessary easements and other interests in land, including water rights acquisitions pursuant to the Original Contract to serve the Original Participating Members.

“Outstanding Bonds” means the Series 2003 Bonds, Series 2005 Bonds, and Series 2017 Bonds that are currently outstanding in the aggregate principal amount of \$10,800,000.

“Participating Member(s)” means certain of the Original Participating Members and all Additional Participating Members from time to time subject to this Amended and Restated Contract.

“Participating Members Operation and Maintenance Expenses” means that portion of the Operations and Maintenance Expenses allocated to the Participating Members pursuant to Section 5.01 herein.

“Parties” means the Participating Members, the Authority, the City, and all Additional Participating Members from time to time subject to this Amended and Restated Contract.

“Permitted Liens” means:

(a) Minor irregularities, charges, liens, encumbrances, defects, easements, licenses, rights-of-way, servitudes, restrictions, mineral rights, and clouds on title which, in the opinion of counsel to the Authority, do not materially impair the use of the Project for the purposes for which it is designed.

(b) Easements for roads (as used in this Amended and Restated Contract, the term “roads” shall include, without limitation, streets, curbs, gutters, drains, ditches, sewers, conduits, canals, mains, aqueducts, aerators, connections, ramps, docks, viaducts, alleys, driveways, parking areas, walkways, and trackage), utilities (which for purposes of this Amended and Restated Contract shall include, without limitation, water, sewer, electricity, gas, telephone, pipeline, railroad, and other collection, transportation, light, heat, power, and communication systems) and similar easements and other easements, rights-of-way, rights of flowage, flooding, diversion or outfall, licenses, restrictions, and obligations relating to the operation of the Project which, in the opinion of counsel to the Authority, do not materially impair the use of the Project for the purposes for which it is designed.

(c) Rights of the United States or any state or political subdivision, thereof, or other public or governmental authority or agency or any other entity vested with the power of eminent domain to take or control property or to terminate any right, power, franchise, grant, license, or permit previously in force.

“Point(s) of Delivery” means the point or points designated in Exhibit B to this Amended and Restated Contract or by subsequent agreement where water will be delivered by the Authority to the Contracting Parties from the Project.

“Project” means the Original Project and the 2020 Project.

“Project Costs” means and includes, without limitation, the following costs incurred for the Project by or on behalf of the Authority:

(a) the cost of acquisition of the Land Interests, including appraisals, closing costs and title insurance policies;

(b) the cost of acquisition, construction, repair, replacement, or improvement of any structure, item of equipment, or other item, used for, or in connection with, the Project;

(c) the cost of site preparation of the Land Interests, including demolition or removal of structures and improvements as necessary or incident to accomplishing the Project;

(d) the cost of engineering, legal, architectural or other related services;

(e) the preparation cost of plans, specifications, studies, surveys, cost estimates, and other expenses necessary or incident to planning, providing, or financing the Project;

(f) the cost of machinery, equipment, furnishings, and facilities necessary or incident to placing the Project in operation;

(g) finance charges and interest before, during, and after construction;

(h) costs incurred in connection with financing the Project, including, without limitation:

(1) financing, legal, accounting, financial advisory, rating agency, and auditing fees, expenses and disbursements;

(2) the costs of a Credit Agreement;

(3) the cost of printing, engraving, and reproduction services; and

(4) the cost of a trustee’s or paying agent’s initial or acceptance fee and subsequent fees.

(i) all costs, fees and expenses of litigation of all kinds;

(j) the cost of property casualty and public liability insurance;

(k) the Authority’s Overhead Expenses; and

(l) other costs generally recognized as a part of project construction costs.

“Refunding Bonds” means any bonds issued to refund the Outstanding Bonds.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission and any successor to its duties.

“Series 2021 Bonds” means the Bonds that the Authority intends to issue to finance the construction of the 2020 Project.

“Sale and Offering Documents” means any official notice of sale, official bid form, preliminary official statement, official statement, application to the Texas Water Development Board, or other offering document for the Bonds.

“Special Project Bonds” means the Authority’s “Taxable Contract Revenue Bonds (San Marcos River Rights Project), Series 2008”.

“State” means the State of Texas.

“System” means all properties, facilities and plants (including the projects relating to the Lake Dunlap treatment facilities) currently owned, operated, and maintained by the Authority for the supply, treatment, and transmission of treated potable water, together with all future extensions, improvements, replacements and additions thereto, whether situated within or without the limits of the Authority; provided, however, that notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term System shall not mean to include facilities of any kind which are declared not to be a part of the System and which are acquired or constructed by or on behalf of the Authority with the proceeds from the issuance of Bonds, as special revenue obligations of the Authority which are not payable from revenues of the System but which are payable from and equally and ratably secured by other liens on and pledges of any revenues, sources or payments, not pledged to the payment of the System bonds including, but not limited to, special contract revenues or payments received from any other legal entity in connection with such facilities.

Section 1.02. Construction.

Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Amended and Restated Contract and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity of this Amended and Restated Contract.

## ARTICLE II

### **Representations and Warranties**

#### Section 2.01. Representations and Warranties of Authority.

The Authority hereby represents to the Parties that:

A. The Authority is a political subdivision under the laws of the State and is duly qualified and authorized to carry out the governmental functions as contemplated by this Amended and Restated Contract; the Authority has full power and authority to sell or otherwise convey treated water to the Contracting Parties in accordance with the terms of this Amended and Restated Contract.

B. The Authority has the power, authority, and legal right to enter into and perform under this Amended and Restated Contract and the execution, delivery, and performance hereof have been duly authorized.

C. The Authority is authorized to own and finance the Project pursuant to the Authority Act, including the issuance of the Series 2021 Bonds.

D. This Amended and Restated Contract has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding special obligation of the Authority enforceable in accordance with its terms.

#### Section 2.02. Representations and Warranties of Participating Members.

Each of the Participating Members hereby represents and warrants to the Parties that:

A. It is a political subdivision or water supply corporation under the laws of the State and has full power and authority to purchase treated water from the Authority in accordance with the terms of this Amended and Restated Contract, and the execution, delivery, and performance hereof have been duly authorized.

B. The execution and delivery of this Amended and Restated Contract by such Participating Member and the performance of the provisions hereof by such Participating Member do not and will not conflict with or constitute on the part of such Participating Member a breach or a default of any provision of any other contract or agreement of such Participating Member.

C. This Amended and Restated Contract has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of the Participating Member enforceable in accordance with its terms.

Section 2.03. Representations of City.

City hereby represents to the Parties that:

A. The City is a political subdivision and a home-rule municipality under the laws of the State and is duly qualified and authorized to carry out the governmental functions as contemplated by this Amended and Restated Contract.

B. The City has the power, authority, and legal right to enter into and perform under this Amended and Restated Contract and the execution, delivery, and performance hereof have been duly authorized.

C. The City has the authority to enter into an agreement with the Authority for the provision of governmental services, including water services, pursuant to the Interlocal Cooperation Act.

D. This Amended and Restated Contract has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding special obligation of the City enforceable in accordance with its terms.

**ARTICLE III**

**Construction of Project and Issuance of Bonds**

Section 3.01. Agreements of the Parties.

Each of the Participating Members and the City hereby find that the Annual Payments paid by the Participating Members pursuant to this Amended and Restated Contract is the sole security for the Outstanding Bonds, the Series 2021 Bonds, and any Refunding Bonds.

Section 3.02. Contribution of the City.

The City will not be a Participating Member under this Amended and Restated Contract. In return for the right to receive treated water from the 2020 Project pursuant to the terms of this Amended and Restated Contract, the City agrees to contribute \$7,918,624.00 from any source, provided that at least \$511,593.00 of the City's contribution shall be made from available taxes or revenues (or any source other than tax-exempt debt). The City shall make its contributions on the following schedule:

- The City will contribute to the Authority on or before December 1, 2020 the amount of \$3,283,642.00, of which amount \$2,772,049.00 represents the City's share of the Original Project based on an agreed depreciated value of the Original Project financed with the Outstanding Bonds as of the Contract Date of \$9,425,811.00 and \$511,593.00 represents a portion of the City's financial or contractual obligations related to the acquisition, construction and financing 2020 Project. The City's contribution in the amount of \$511,593.00 shall be utilized by the Authority to "pay down" the Martindale WSC's right to capacity so that such amounts are less than 10% of the total of the capacity of the 2020 Project, and so that the Series 2021 Bonds and any Refunding

Bonds can be issued by the Authority on a tax-exempt basis, thereby reducing the overall financing costs (and the City’s corresponding allocable share) for the 2020 Project.

- The City will contribute the remaining amount of \$4,634,982.00 for deposit to an account controlled by the Authority no later than May 1, 2021. Such amount shall prepay the City’s financial or contractual obligations related to the acquisition, construction and financing of the 2020 Project.
- The Authority, after consultation with its financial advisor and other consultants, shall use the remainder of the City’s contribution to repay Outstanding Bonds or in such other manner which benefits the Participating Members.

Section 3.03. Allocation of the Projects.

After the initial contribution from the City of \$5,146,575.00 as described in Section 3.02, the City and each Participating Member’s respective share of the depreciated value of the Project, its annual capacity, and maximum daily capacity (as further defined in Exhibit A, Schedule II), based on such entity’s respective participation in the Project (inclusive of the 2020 Project), shall be as follows:

| Entity             | Allocation of 2020 Project Value | Percentage of 2020 Project Value | Allocated Capacity (AF) | Maximum Capacity (GPD) |
|--------------------|----------------------------------|----------------------------------|-------------------------|------------------------|
| County Line SUD    | \$5,123,125                      | 29.275%                          | 1,308.00                | 1,610,116              |
| Crystal Clear SUD  | 1,958,425                        | 11.191%                          | 500.00                  | 615,488                |
| Martindale WSC     | 1,746,850                        | 9.982%                           | 446.00                  | 549,015                |
| Maxwell SUD        | 3,525,025                        | 20.143%                          | 900.00                  | 1,107,878              |
| City of San Marcos | 5,146,575                        | 29.409%                          | 1,314.00                | 1,617,502              |
| Total              | \$17,500,000                     | 100.00%                          | 4,468.00                | 5,500,000              |

The Parties further agree that all Participating Members, but not the City, shall make payments to or on behalf of the Authority in amounts sufficient to meet all of the Authority’s obligations relating to the Outstanding Bonds, the Series 2021 Bonds, and any Refunding Bonds based on their respective participation in the Project as reflected in the chart below, pursuant to this Amended and Restated Agreement.

| Entity             | Percentage of Bond Cost Allocation |
|--------------------|------------------------------------|
| County Line SUD    | 41.471%                            |
| Crystal Clear SUD  | 15.853%                            |
| Martindale WSC     | 14.141%                            |
| Maxwell SUD        | 28.535%                            |
| City of San Marcos | 0.00%                              |
| Total              | 100.00%                            |

Section 3.04. Allocation of Special Project Bonds.

Costs related to the Special Project Bonds, the proceeds of which were used by the Authority to acquire certain San Marcos River water rights for the purposes of supplying treated water to Crystal Clear SUD, County Line SUD, and Maxwell SUD, shall be allocated as set forth below:

| Entity             | Percentage of Special Project Bond Cost Allocation |
|--------------------|--|
| County Line SUD    | 36.42%   |
| Crystal Clear SUD  | 18.10%   |
| Martindale WSC     | 0.00%  |
| Maxwell SUD        | 45.48%   |
| City of San Marcos | 0.00%  |
| Total              | 100.00%  |

Section 3.05. Construction of Project.

The Authority agrees that the acquisition, construction, and improvement of the 2020 Project by the Authority will be accomplished in accordance with generally accepted engineering practices and, subject to the issuance of the Bonds pursuant to Section 3.07 to provide a source of funds, with all practical dispatch.

Section 3.06. Compliance with Certain City Rules and Regulations.

In consideration of the right to receive treated water under this Amended and Restated Contract, the City agrees that the Authority will be granted a waiver or other exemption from the following rules and regulations related to the construction of the 2020 Project:

- Section 3.8.1.7 Conventional Streetscape Type shall be modified to remove the requirement for a 6-foot sidewalk for the approximately 1,110 linear feet of frontage along Old Martindale Road, and no payment-in-lieu of construction shall be required.
- Section 3.6.2.1 Block Perimeter shall not apply to subdivision plat for the property.
- Chapter 3, Article 10 Parks and Open Space shall not apply to the Minor Plat associated with the improvements. The City acknowledges that Lot 2 of the proposed subdivision is currently used for residential purposes and no dedication or fees shall apply.

Section 3.07. Issuance of Bonds.

A. The Authority may issue its Bonds, payable from and secured by a pledge of the Annual Payments from this Amended and Restated Contract to finance the costs of acquiring, constructing, extending, enlarging, repairing, renovating, equipping, and otherwise improving the Project, or to refund any outstanding Bonds.

B. (1) Each Bond Resolution of the Authority shall specify the exact principal amount of the Bonds to be issued thereunder, which Bonds shall mature within the maximum allowable period or such shorter period as determined by the Authority and shall bear interest not exceeding the maximum allowable rates, all as permitted by law, and each Bond Resolution shall contain such other terms and provisions pertaining to the security and payment of Bonds and the operation and maintenance of the Project as may be necessary for the marketing and sale of the Bonds. The Authority may from time to time issue its Bonds in such amounts as are within its judgment and discretion sufficient to achieve full implementation of the Project.

(2) Prior to the final adoption of a Bond Resolution or any amendment of a Bond Resolution by the Authority's Board of Directors a copy of the proposed Bond Resolution, and the Sale and Offering Documents shall be presented to the Participating Member for review and approval.

(3) Upon the Participating Member's approval of (i) each Bond Resolution hereafter adopted by the Authority, (ii) any amendments to any Bond Resolution, and (iii) the Sale and Offering Documents and the delivery to the Authority of a certification signed by the authorized representative of the Participating Member to the effect that the Bond Resolution and the Sale and Offering Documents comply with this Amended and Restated Contract, then upon the adoption and approval of the Bond Resolution in such final form by the Authority's Board of Directors and the issuance and delivery of the Bonds to the purchaser thereof, the Bond Resolution shall for all purposes be considered approved by the Authority and deemed to be in compliance with this Amended and Restated Contract in all respects, and the Bonds issued thereunder will constitute Bonds as defined in this Amended and Restated Contract for all purposes. Any owner of Bonds is entitled to rely fully and unconditionally on any such approval.

(4) All covenants and provisions in the Bond Resolution affecting, or purporting to bind, the Participating Member, shall, upon the delivery of the Bonds, become absolute, unconditional, valid, and binding covenants and obligations of the Participating Member so long as said Bonds and interest thereon are outstanding and unpaid, and may be enforced as provided in this Amended and Restated Contract and the Bond Resolution. Particularly, the obligation of the Participating Member to make, promptly when due, all Annual Payments specified in this Amended and Restated Contract shall be absolute and unconditional, and said obligation may be enforced as provided in this Amended and Restated Contract. In addition, subject to the approval of the Participating Member, the Authority may

enter into Credit Agreements for the purpose of achieving the lowest financing costs for the Project.

Section 3.08. Liens. None of the Contracting Parties or the Authority will create or permit or suffer to exist any lien, encumbrance, or charge upon the Project or any interest therein at any time, except Permitted Liens.

Section 3.09. Tax-Exempt Bonds. The Parties hereto understand and agree that the Authority will use its best efforts to provide for, but will not be liable for a failure to produce, the lowest overall debt service cost for the Bonds to be issued for the Project. In connection therewith, the Parties intend that the Authority will issue Bonds, the interest on which is excludable from the gross income of the owners thereof for federal income tax purposes. The Parties hereto acknowledge their understanding that the federal income tax laws impose certain restrictions on the use and investment of proceeds of such tax-exempt bonds and on the use of the property financed therewith and the output produced therefrom. Accordingly, the Parties agree and covenant that if the Bonds are offered to investors with the understanding that the interest will be exempt from federal income taxation, then the Parties, their assigns and agents, will take such action to assure, and refrain from such action which will adversely affect the treatment of such Bonds as obligations described in section 103 of the Code. Should any Party fail to comply with such covenant, the effect of which being that the Bonds no longer qualify as obligations described in the Code, such defaulting party shall be liable for all costs resulting from the loss of the tax-exempt status of the Bonds. The Parties hereby agree and covenant to comply with all of the representations and covenants relating to such exemption which are set out in any Bond Resolution or as set forth in this Amended and Restated Contract. The Parties further agree and covenant that in the event the Bonds issued are to be tax-exempt, they will modify such agreements, make such filings, restrict the yield on investments, and take such other action necessary to fulfill the applicable provisions of the Code. For these purposes, the Parties may rely on the respective opinion of any firm of nationally-recognized bond attorneys selected by them. In the event that a conflict arises in the opinions of the respective firms of each of the Parties, the Parties will identify a different firm, that is mutually acceptable to both Parties, in order to resolve the conflict of opinion.

Section 3.10. Payment to Rebate Fund. In the event that tax-exempt Bonds are issued as provided in Section 3.09, the Authority will covenant and agree in the Bond Resolution to make the determinations and to pay any deficiency into a rebate fund, at the times and as described in the Bond Resolution to comply with the provisions of section 148(f)(2) of the Code. In any event, if the amount of cash held in the rebate fund shall be insufficient to permit the trustee or paying agent to make payment to the United States of America of any amount due on any date under section 148(f)(2) of the Code, the Authority forthwith shall pay the amount of such insufficiency on such date to the trustee or paying agent in immediately available funds for such purpose.

Section 3.11. Sale and Offering Documents. At the request of the Authority, the Participating Members and the City shall provide to the Authority current and historical information concerning their respective utility systems, general fund information, the financial conditions results, and prospects of the Participating Members, and such other information concerning the Participating Members and the City as the Authority shall deem advisable for

inclusion in the Sale and Offering Documents for the Bonds of each series and shall certify to the Authority and the underwriters of any offering of Bonds to be made by means of such Sale and Offering Documents when and if the Participating Members and the City deem such Sale and Offering Documents to be complete and final for purposes of the Rule. The Participating Members and the City represent and warrant that all statements concerning the Participating Members and the City (including, without limitation, their financial condition, results, and prospects, their utility system, and any demographic and economic information concerning the area served by their utility system) that are contained in any Sale and Offering Document shall be true in all material respects and shall not omit to state any material fact necessary to make the statements made in such Sale and Offering Document, in light of the circumstances in which they are made, not misleading.

Section 3.12. Authority's Rights Assigned to Trustee. The Participating Members are advised and recognize that as security for the payment of the Bonds, the Authority may assign to a trustee, pursuant to one or more trust indentures to be authorized by the Bond Resolution, the Authority's rights under this Amended and Restated Contract, including the right to receive the Annual Payments hereunder. The Participating Members herewith assent to such assignment and will make the Annual Payments directly to the trustee without defense or set-off by reason of any dispute between the Participating Members and the Authority or the trustee. All rights against the Participating Members arising under this Amended and Restated Contract or the Bond Resolution and assigned to the trustee may be enforced by the trustee, or the owners of the Bonds, to the extent, provided in the Bond Resolution, and the trustee, or the owners of the Bonds, shall be entitled to bring any suit, action, or proceeding against the Participating Members, to the extent provided in the Bond Resolution, for the enforcement of this Amended and Restated Contract, and it shall not be necessary in any such suit, action, or proceeding to make the Authority a party thereto.

## ARTICLE IV

### Sale and Purchase of Treated Water; Operating Requirements

Section 4.01. Water Conveyance; Right of First Refusal to Purchase Capacity.

A. The Contracting Parties hereby agree to pay for the right to receive from the Authority and the Authority hereby agrees to sell to the Contracting Parties all of the treated water produced by the Authority through the Project, subject to the terms of conditions of this Amended and Restated Contract. It is expressly recognized that the treated water delivered to each Contracting Party as disclosed in Exhibit A shall be owned by such Contracting Party and may be sold, or otherwise conveyed by such Contracting Party in accordance with applicable law; provided, however, before any Contracting Party enters into a contract or other agreement to transfer, sale, or convey the right to receive a share of the capacity of the Project pursuant to the terms of this Amended and Restated Contract, such Contracting Party shall afford the Authority the right of first refusal for a period of 90 days to obtain such capacity for redistribution to other Contracting Parties on the same terms and conditions; and further provided, however, that no sale of the right to receive a share of capacity of the Project, nor any redistribution by the Authority of such capacity, shall adversely affect the treatment of any Bonds issued under Section 3.09 hereof as obligations described in section 103 of the Code.

Upon the exercise of such right, the Authority shall purchase, and the Contracting Parties hereby each agree to relinquish their right to purchase, treated water produced by the Project upon reduction, on a proportionate basis, of the Contracting Party's share of their Annual Payments under this Amended and Restated Contract.

B. Each of the Contracting Parties shall be entitled to receive from the Authority the quantities of treated water identified in Exhibit A attached hereto and in accordance with this Amended and Restated Contract. To the extent the Authority has acquired additional water under the GBRA Contract or from some other source, or to the extent the Authority acquires a percentage share of the treated water produced by the Project pursuant to Paragraph A of this Section, the Authority may sell or otherwise use such water to supply treated water to other Contracting Parties, to retail customers, if any, of the Authority, or on a spot basis. To the extent the Contracting Parties do not request all of their allotted treated water as set forth on Exhibit A, the Authority may sell or otherwise use such water to supply treated water to other Contracting Parties, to retail customers, if any, of the Authority, or on a spot basis, provided that revenues from such spot sales shall be credited in whole to the Operation and Maintenance Expenses of the Contracting Parties whose share of capacity is utilized for such sales.

Section 4.02. Points of Delivery.

Each Contracting Party agrees to take treated water at the Point(s) of Delivery for such Contracting Party set forth in Exhibit B hereto. Modification of such Points of Delivery may be mutually agreed to in writing between each Contracting Party, respectively, and the Authority. The Authority will maintain ownership of the connection (being any device, including welded pipe connections, water installations, valves, meter vaults, or similar devices) between the Authority's System and the utility system of the Contracting Parties.

Section 4.03. Other Contracts.

A. If the Authority exercises its right to water under this Amended and Restated Contract pursuant to Section 4.01, the Authority reserves the right to supply treated water from the Project to others on wholesale or retail basis. Each such contract with other entities shall be limited to the Authority's share of treated water covered by this Amended and Restated Contract and shall not contain any provision which would adversely affect the Contracting Parties' percentage share of treated water covered by this Amended and Restated Contract, except as permitted by Section 4.01.

B. The Contracting Parties hereto recognize and acknowledge that the Authority shall have the right and authority to contract or make other arrangements with respect to its percentage share of water from the Project without limitation or approval of any Contracting Party.

Section 4.04. Quality.

A. The water to be delivered by the Authority and received by each Contracting Party shall be treated water from the Project of a quality sufficient to meet the requirements for potable water established by the Commission and the United States Environmental Protection Agency. Each Contracting Party has satisfied itself that such water will be suitable for its needs.

The Authority shall not be responsible for maintaining any particular amount of chlorine residuals at any point in any Contracting Party's utility system.

B. The Authority shall periodically collect samples of treated water delivered to Contracting Parties and other customers and cause same to be analyzed consistent with guidelines established by the Commission using the then-current edition of Standard Methods for Examination of Water and Wastewater as published by the American Water Works Association ("AWWA") and others.

Section 4.05. Metering Equipment.

A. The Authority will furnish, install, operate, and maintain at its expense the necessary equipment and devices (including a meter house or pit) of standard type required for measuring the quantity of water delivered under this Amended and Restated Contract from the Project to each Contracting Party's Point(s) of Delivery. Such meters and other equipment so installed shall be the property of the Authority. The Authority shall inspect, calibrate, and adjust its meters at least annually as necessary to maintain accurate measurements of the quantity of water being delivered. Each Contracting Party shall have access to the metering equipment at all reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the Authority. If requested, a Contracting Party may witness such reading, calibration, and adjustment of meters. A Contracting Party is also entitled to the testing reports upon request. Any measuring device which fails to function or which functions incorrectly shall promptly be adjusted, repaired, or replaced by a like device having the required accuracy. A meter registering not more than five percent (5%) above or below the test results shall be deemed to be accurate; provided, however, that for any meter installed on or after the Contract Date, a meter registering not more than two percent (2%) above or below the test results shall be deemed to be accurate. The previous readings of any meter disclosed by tests to be inaccurate shall be corrected for one-half (1/2) the period elapsed since the next preceding meter test but in no event to exceed six (6) months in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the Authority and the Contracting Party shall agree upon a different amount. All readings of meters will be entered upon proper books of record maintained by the Authority. Any Contracting Party may have access to said record books during normal business hours.

B. Under the GBRA Contract, the Authority is required to install metering devices to measure the amount of water taken from Canyon Lake and purchased from GBRA. Such metering devices shall be considered to be a part of the Project.

Section 4.06. Pressure, Backflow, Maximum Rate of Flow.

A. The Authority shall deliver treated water to the Point(s) of Delivery for each Contracting Party at a pressure of not less than 36 psi or at such other pressure agreed upon by the Authority and the Contracting Party. After initial construction of the Project, if a Contracting Party requires a greater or lesser pressure, such Contracting Party shall bear all of the costs of providing such greater or lesser pressure. Pressure failure due to supply line breaks, power failures, flood,

fire, earthquakes, other catastrophes, or use of water to fight fires, or any other cause beyond the reasonable control of the Authority shall relieve the Authority from compliance with this provision for such reasonable period of time as may be necessary to restore pressure.

B. The Authority shall install and maintain at its sole expense at each Point of Delivery a backflow preventer of AWWA-approved quality. Each Contracting Party shall have the right to inspect the backflow preventer at each of its Points of Delivery at such reasonable times at such Contracting Party in its discretion may determine are required.

C. The maximum rate of flow per day that may be provided to each Contracting Party by the Authority is established in Exhibit A hereto and incorporated by reference for all purposes to this Amended and Restated Contract.

## ARTICLE V

### Fiscal Provisions

#### Section 5.01. Annual Requirement of the Participating Members.

Subject to the terms and provisions of this Amended and Restated Contract, the Authority will provide and pay for the cost of the Project, in part, through the issuance of Bonds. It is acknowledged and agreed that payments by the Participating Members to the Authority under this Amended and Restated Contract will be the sole or primary source of funds available to the Authority to provide the Annual Requirement. Each Participating Member shall be obligated to pay the full amount of its Annual Requirement notwithstanding that it may elect not to receive the full amount of treated water available to it under this Amended and Restated Contract. In compliance with the Authority's duty to fix and from time to time to revise the rates and charges for services rendered under this Amended and Restated Contract, the Annual Requirement may change from time to time. Each such Annual Requirement shall be allocated among the Participating Members and the Authority based upon a rate methodology to be developed by the Authority or according to their respective percentage shares of treated water covered by this Amended and Restated Contract (provided that for the purposes of Section 5.01(B) herein, the respective percentage shares shall exclude any share of treated water made available to the City pursuant to this Amended and Restated Contract), and the Annual Requirement for each Annual Payment Period shall be identified in each annual budget and shall at all times be not less than an amount sufficient to pay or provide for the payment of the following:

- A. all Participating Members Operation and Maintenance Expenses; and
- B. a capital component, including principal, interest, premium, reserve funds, and other funds established or required by any Bond Resolution and to pay the principal of and interest on the Bonds.

#### Section 5.02. Annual City Payment.

Following the City's contribution pursuant to Section 3.02 above, the City shall have no obligation to pay any costs related to the Bonds. The City shall have no obligation to pay any costs related to water rights or raw water contract supplying water for treatment which is allocated to

the Participating Members. The City shall be obligated to pay the full amount of its Annual City Payment notwithstanding that it may elect not to receive the full amount of treated water available to it under this Amended and Restated Contract. In compliance with the Authority's duty to fix and from time to time to revise the rates and charges for services rendered under this Amended and Restated Contract, the Annual City Payment may change from time to time. The Annual City Payment shall be allocated to the City based upon a rate methodology to be developed by the Authority and according to its respective percentage share of treated water covered by this Amended and Restated Contract, and the Annual City Payment for each Annual Payment Period shall be identified in each annual budget and shall at all times be an amount sufficient to pay the City Operation and Maintenance Expenses.

Section 5.03. Annual Budget.

Each annual budget for the acquisition and/or operation and maintenance of the Project shall always provide for amounts sufficient to pay the Annual Requirement and the Annual City Payment. The annual budget for the Project for the Annual Payment Period during Fiscal Year 2020-2021 will be prepared and adopted by the Authority based on estimates made by the Authority. Each Contracting Party will be furnished a copy of such annual budget, and each Contracting Party hereby acknowledges its ability to pay its share of the Annual Requirement or Annual City Payment, as applicable, from available funds budgeted therefor. On or before July 15 of each year thereafter commencing July 15, 2021, the Authority shall furnish to each Contracting Party a preliminary estimate of the Annual Payment required from each Contracting Party for the next following Annual Payment Period.

Not less than 60 days before the commencement of each Annual Payment Period beginning in Fiscal Year 2020-2021, the Authority shall cause to be prepared a preliminary budget for the Project for the next ensuing Annual Payment Period. A copy of such preliminary budget shall be filed with each Contracting Party before action by the Board. Any Contracting Party may submit comments about the preliminary budget directly to the Board. The Board may adopt the preliminary budget or make such amendments thereof as to it may seem proper, provided, however, no change or amendment to the preliminary budget will be made by the Board alter such preliminary budget has been submitted to the Contracting Parties which change or amendment would in effect increase the Annual Requirement or Annual City Payment without resubmitting such amended preliminary budget to the Contracting Parties. The Board shall thereupon approve the annual budget. With respect to budgetary matters, the Contracting Parties shall have the right only to comment on the preliminary budget; their approval of the preliminary or final annual budget shall not be required. The annual budget thus approved by the Board shall be the annual budget for the next ensuing Annual Payment Period. The annual budget, including the first annual budget, may be amended by the Authority at any time to transfer funds from one account or fund to another account or fund provided such transfer will not increase the total budget and the transfer of funds is attributable to the costs of the Project or to the Project's maintenance and operation. Subject to notification to the Contracting Parties, the amount for any account or fund, or the amount for any purpose, in the annual budget may be increased through formal action by the Board even though such action might cause the total amount of the annual budget for the Project to be exceeded; provided, however, such action shall be taken only in the event of an emergency or special circumstances which shall be clearly stated in the notice to the Contracting Parties and in the resolution at the time such action is taken by the Board.

Notwithstanding anything herein to the contrary, no failure of the Authority to estimate, and no mistake by the Authority in any estimate of, the amount of or schedule for Annual Payments due from the Contracting Parties in any fiscal year shall relieve the Contracting Parties from (or defer) their absolute and unconditional obligation to make all Annual Payments or Annual City Payments in full when due.

Section 5.04. Payments by Contracting Parties.

A. Subject to Sections 4.05.A and 4.06.B, each Contracting Party agrees to pay a connection fee for each Point of Delivery equal to the total cost of material, labor, and equipment required to implement such connection.

B. For the treated water available to the Contracting Parties under this Amended and Restated Contract (whether or not the Contracting Parties elect to receive such water), each of the Contracting Parties agrees to pay, at the time and in the manner hereinafter provided, its share of the Annual Requirement or Annual City Payment, as applicable. Each of the Contracting Parties shall pay its part of the Annual Requirement or Annual City Payment, as applicable, for each Annual Payment Period directly to the Authority, in monthly installments in accordance with the schedule of payments furnished by the Authority (or its assigns), as hereinafter provided.

C. Each Contracting Party shall pay its share of the Annual Requirement or Annual City Payment, as applicable, according to a rate methodology to be developed by the Authority or based upon the relative amount of water available to each Contracting Party and set forth on Exhibit A, as amended from time to time. The Authority shall charge each Contracting Party its share of pumping costs according to the volume of water actually delivered.

D. Each Contracting Party's allocated share of the Annual Requirement or Annual City Payment, as applicable, for each Annual Payment Period shall be made in accordance with a written schedule of payments for the appropriate Annual Payment Period which will be supplied to each of the Contracting Parties by the Authority.

E. Notwithstanding the foregoing, the Annual Requirement and the Annual City Payment, and each Contracting Party's share thereof, shall be redetermined, after consultation with each of the Contracting Parties, at any time during any Annual Payment Period, to the extent deemed necessary or advisable by the Authority, if:

1. the Authority exercises its option to acquire treated water pursuant to Section 4.01;
2. unusual, extraordinary, or unexpected Operation and Maintenance Expenses are required which are not provided for in the Authority's annual budget or reserves for the Project;
3. Operation and Maintenance Expenses of the Project are substantially less than estimated;
4. a Contracting Party's interest under this Amended and Restated Contract is terminated as provided herein or Additional Participating Members become subject to this Amended and Restated Contract;

5. the Authority issues Bonds for the Project; or
6. the Authority receives either significantly more or significantly less revenues or other amounts than those anticipated.

F. Each Contracting Party hereby agrees that it will make payments to the Authority required by this Amended and Restated Contract at the Authority's offices within 30 days of the date a bill for service is deposited in the United States mail. If any Contracting Party at any time disputes the amount to be paid by it to the Authority, such complaining party shall nevertheless promptly make such payment or payments; but if it is subsequently determined by agreement or by appropriate administrative, board, agency, or court decision that such disputed payments should have been less, or more, the Authority shall promptly revise and reallocate the charges in such manner that the Contracting Party will recover its overpayment or the Authority will recover the amount due it. All amounts due and owing to the Authority by each Contracting Party or due and owing to any Contracting Party by the Authority shall, if not paid when due, bear interest at the maximum lawful non-usurious rate of interest per annum from the date when due until paid.

G. The Authority shall, to the extent permitted by law, suspend the delivery of services or water from the Project to any Contracting Party which remains delinquent in any payments due under the preceding paragraph for a period of thirty (30) days, and shall not resume delivery of services or water while such Contracting Party is so delinquent. The Authority also retains the right to charge a reconnection fee or other appropriate charges prior to commencing utility service to the delinquent Contracting Party. It is further provided and agreed that if any Contracting Party should remain delinquent in any payments due hereunder for a period of one hundred twenty (120) days, and if such delinquency continues during any period thereafter, such Contracting Party's minimum amount specified in Exhibit A, shall be deemed to have been zero gallons during all periods of such delinquency, for the purpose of calculating and redetermining the percentage of each Annual Payment or Annual City Payment to be paid by the non-delinquent Contracting Parties and the Authority, and the Authority shall redetermine such percentage on that basis in such event so that the non-delinquent Contracting Parties and the Authority collectively shall be required to pay all of the Annual Requirement and Annual City Payment. However, the Authority shall pursue all legal remedies against any such delinquent Contracting Party to enforce and protect the rights of the Authority, the other Contracting Parties, and the holders of the Bonds, if Bonds have been issued or incurred. The delinquent Contracting Party shall not be relieved of the liability to the Authority for the payment of all amounts which would have been due hereunder had no default occurred or the percentage had not been redetermined as provided in this Section. It is understood that the foregoing provisions are for the benefit of the Authority and holders of the Authority's Bonds, if Bonds have been issued or incurred, so as to insure that all of the Annual Requirement will be paid by the non-delinquent Contracting Party and the Authority during each Annual Payment Period regardless of the delinquency of a particular Contracting Party. If any amount due and owing the Authority by any Contracting Party is placed with an attorney for collection, such Contracting Party shall pay to the Authority all attorneys' fees, in addition to all other payments provided for herein, including interest.

H. If, during any Annual Payment Period, any Contracting Party's Annual Payment or Annual City Payment is redetermined in any manner as provided or required in this Section, the

Authority will promptly furnish such Contracting Party with an updated schedule of monthly payments reflecting such redetermination.

Section 5.05. Unconditional Payments.

A. Notwithstanding any provision of this Amended and Restated Contract to the contrary, while this Amended and Restated Contract remains in effect each of the Participating Members agrees to pay its share of the total cost of the Project and the Bonds, and the City agrees to pay the City Operation and Maintenance Expenses. If the Authority elects to exercise its option to acquire a percentage share of the treated water covered by this Amended and Restated Contract as provided in Section 4.01, the Annual Payment or Annual City Payment of each Contracting Party shall be reduced to the proportion that each Contracting Party's amount of water identified in Exhibit A bears to the total amount of water available from the Project. Initially, the Participating Members agree to pay 100% of the Annual Requirement and the City agrees to pay 100% of the Annual City Payment, but, if the Authority exercises its option to acquire treated water from the Project pursuant to Section 4.01, the Contracting Parties and the Authority shall share the cost of the Operation and Maintenance Expenses of the Project, and the Participating Members and the Authority shall share the cost of the Bonds, in proportion to quantities of treated water each is entitled to take from the Project pursuant to this Amended and Restated Contract.

B. Recognizing that the Contracting Parties urgently require the facilities and services of the Project, and that such facilities and services are essential and necessary for actual use and for standby purposes, and further recognizing the fact that the Authority will use payments received from the Participating Members to pay and secure the Bonds, it is hereby agreed that each of the Contracting Parties shall be unconditionally obligated to pay, without offset or counterclaim, its share of the Annual Requirement or Annual City Payment, as applicable, as provided and determined in this Amended and Restated Contract, regardless of whether or not the Authority actually acquires, constructs, or completes the Project or is actually delivering water from the Project to any Contracting Party hereunder, or whether or not any Contracting Party actually receives or uses water from the Project whether due to Force Majeure or any other reason whatsoever, regardless of any other provisions of this or any other contract or agreement between any of the parties hereto. This covenant by the Participating Members shall be for the benefit of and enforceable by the holders of the Bonds as well as the Authority.

Section 5.06. Continuing Right to Treated Water.

For and in consideration of agreeing to the unconditional payments to be made under this Amended and Restated Contract, each Participating Member is entitled to a firm right to treated water from the Project in the amounts indicated in Exhibit A, as such amount may be modified from time to time by the terms of this Amended and Restated Contract. That right shall continue for the term of this Amended and Restated Contract and any renewals thereof, subject to the terms of the GBRA Contract for the Participating Members.

## ARTICLE VI

### Additional Participating Members

#### Section 6.01. Additional Participating Members.

If water is available, the Authority and the Contracting Parties agree that the Contracting Parties shall have a right of first refusal related to such water. If more than one Contracting Party exercises its right to such water, the Authority shall allocate the water equally to those Contracting Parties. If no Contracting Party exercise its right or if water remains available after satisfying the request(s) of the Contracting Parties, the Authority and the Contracting Parties agree that additional entities may become subject to the provisions of this Amended and Restated Contract as Additional Participating Members by providing the following to the Authority and the then Contracting Parties:

A. an executed signature page to this Amended and Restated Contract in form satisfactory to the Authority;

B. to the extent any representation contained in this Amended and Restated Contract relating to Participating Members does not correctly describe such entity, a revision of such representations satisfactory in form and content to the Authority in the Authority's sole discretion to be included on Exhibit C to this Amended and Restated Contract;

C. a revised Exhibit A to this Amended and Restated Contract satisfactory to the Authority and all then Participating Members;

D. a revised Exhibit B to this Amended and Restated Contract setting forth the Point(s) of Delivery for such entity which shall be satisfactory to the Authority;

E. a revised Exhibit C to this Amended and Restated Contract to the extent applicable to such entity and in form satisfactory to the Authority; and

F. such other certifications and information as may be reasonably requested by the Authority and the then Contracting Parties.

## ARTICLE VII

### Special Conditions

#### Section 7.01. Operation and Maintenance of the Project.

The Authority will continuously operate and maintain the Project in an efficient manner and in accordance with good business and engineering practices, and at reasonable cost and expense. The Authority recognizes its right and duty to operate the Project in the most prudent and economical manner for the benefit of all Contracting Parties.

Section 7.02. Project Schedule.

It is the intent of the parties that the Project be placed in operation as soon as practicable, and the Authority agrees to proceed diligently with the evaluation of feasibility, the securing of regulatory permits, and the design and construction of the Project to meet such schedule, subject to the other terms and conditions in this Amended and Restated Contract.

Section 7.03. Permits, Financing, and Applicable Laws.

Any obligations on the part of the Authority to acquire, construct, and complete the Project and related facilities and to provide treated water from the Project to the Contracting Parties shall be (i) conditioned upon the Authority's ability to obtain all necessary permits, material, labor, and equipment; (ii) subject to the Authority's final determination of feasibility of transportation of the treated water from the Project; (iii) conditioned upon the ability of the Authority to finance the cost of the Project through the sale of the Bonds; and (iv) subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, the Commission, and any regulatory body having jurisdiction.

Section 7.04. Title to Water; Indemnification.

A. Title to all water supplied by the Contracting Parties to the intake structure of the Project that each such Party owns under Certificates of Adjudication shall remain in that Party's ownership, which water as it passes through the Project facility to the individual Points of Delivery shall be held by the Authority acting as a bailee.

B. Title to all water supplied to each Contracting Party that is obtained by lease from the Guadalupe-Blanco River Authority and the Baughs family and its successors shall be in the Authority up to the Point of Delivery for such Contracting Parties, at which point title shall pass to the Contracting Party. Title to leased treated water transmitted through the lines of a Contracting Party for the use of another Contracting Party shall remain in the Authority until it reaches the Point(s) of Delivery of the receiving Contracting Party. The Authority and each of the Contracting Parties shall, to the extent permitted by law, save and hold each other harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation and delivery of said water while title remains in such party.

Section 7.05. Payments Solely From Revenues.

The Authority shall never have the right to demand payment by any Contracting Party of any obligations assumed by it or imposed on it under and by virtue of this Amended and Restated Contract from funds raised or to be raised by taxes, and the obligations under this Amended and Restated Contract shall never be construed to be a debt of such kind as to require any of the Contracting Parties to levy and collect a tax to discharge such obligation. Nonetheless, any Contracting Party may make payments from its utility system revenues, or from any other lawful source, including ad valorem taxes, if lawfully available to such Contracting Party.

Section 7.06. Operating Expenses.

Each of the Contracting Parties represents and covenants that, to the extent payments under this Amended and Restated Contract are made with utility system revenues, such payments shall constitute reasonable and necessary “operating expenses” of its utility system, as defined in Chapter 1502, Texas Government Code, as amended, and that all such payments will be made from the revenues of its utility system or any other lawful source. Each Contracting Party represents and has determined that the treated utility supply to be obtained from the Project is absolutely necessary and essential to the present and future operation of its utility system and that the Project represents a long-term source of supply of treated water to meet current and projected water needs of the Contracting Party’s utility system and facilities, and, accordingly, all payments required by this Amended and Restated Contract to be made by each Contracting Party shall constitute reasonable and necessary operating expenses of its utility system as described above, with the effect that such payments from revenues of such systems shall be deducted from gross revenues of the system in the same manner as other system operating and maintenance expenses for purposes of determining net revenues available to pay bonds or other similar obligations heretofore or hereafter issued by such Contracting Party, which obligations are payable from and secured by a pledge of the revenues of the system or facilities after deduction of maintenance and operating expenses.

Section 7.07. Rates for Water.

Each of the Contracting Parties agrees throughout the term of this Amended and Restated Contract to continuously operate and maintain its utility system and to fix and collect such rates and charges for utility services to be supplied by its system as aforesaid as will produce revenues in an amount equal to at least (i) all of the expenses of operation and maintenance expenses of such system, including specifically, its Annual Payment or Annual City Payment, as applicable, under this Amended and Restated Contract, and (ii) all other amounts as required by law and the provisions of the ordinance or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding, including the amounts required to pay all principal of and interest on such bonds and other obligations.

Section 7.08. Use of Funds and System.

The Authority covenants and agrees that neither the proceeds from the sale of the Bonds, nor the money paid pursuant to this Amended and Restated Contract, nor any earnings from the investment of any of the foregoing, will be used for any purposes, except those directly relating to the Project and the Bonds as provided in this Amended and Restated Contract.

Section 7.09. Rights-of-Way.

A. Each Participating Member hereby grants to the Authority without additional cost to the Authority, the use of the streets, easements, rights-of-way, and pipelines under its control for the construction, emergency repairs, operation, and maintenance of the Project and the provision and transmission of treated water hereunder; provided, however, such grant of the use of streets, easements, rights-of-way, and pipelines to the Authority is subject to and conditioned on the Authority (i) complying with all applicable policies, practices, and regulations of the

Participating Members governing and regulating such use of the streets, easements, rights-of-way, and pipelines and (ii) paying all costs, if any, of restoring such streets, easements, rights-of-way, and pipelines to substantially the same state of condition that existed prior to the Authority's use; and further provided, however, that the Authority and the affected Participating Member may mutually agree to a charge in lieu of any such fees normally applied to utilities.

B. To the extent they have such ownership authority, each Participating Member agrees that, with prior written approval the Authority may use streets, alleys, and public rights-of-way within the Participating Member's boundaries for pipeline purposes.

Section 7.10. Insurance.

The Authority agrees to carry and arrange for fire, casualty, public liability, and/or other insurance, including self-insurance, on the Project for purposes and in amounts which, as determined by the Authority, ordinarily would be carried by a privately owned utility company owning and operating such facilities, except that the Authority shall not be required to provide liability insurance except to insure itself against risk of loss due to claims for which it can, in the opinion of the Authority's legal counsel, be liable under the Texas Tort Claims Act or any similar law or judicial decision. Such insurance will provide, to the extent feasible and practicable, for the restoration of damaged or destroyed properties and equipment, to minimize the interruption of the services of such facilities. Premiums for such insurance that relate directly to Project or, under generally accepted cost accounting practices, is allocable to the Project, shall constitute an Operation and Maintenance Expense.

Section 7.11. Additional Special Provisions.

The parties hereto acknowledge and agree to the Special Provisions, if any, which are set forth in Exhibit C attached hereto and incorporated herein for all purposes. The Special Provisions for this Amended and Restated Contract reflect circumstances or issues for specific Contracting Parties which may be different from those of other Contracting Parties and therefore constitute a modification of or requirement in addition to the standard provisions otherwise contained in this Amended and Restated Contract. To the extent of any conflict between any Special Provision and any other provision of this Amended and Restated Contract, the Special Provision shall control.

**ARTICLE VIII**

**Continuing Disclosure**

Section 8.01. Continuing Disclosure Annual Reports.

Following the issuance of Bonds of any series, the offer or sale of which is not exempt from the Rule and, until any Participating Member is no longer obligated, contingently or otherwise, to make Annual Payments in respect of the Bonds of such series, any Participating Member undertakes to and shall file annually with the MSRB through EMMA, within six months after the end of each fiscal year, (1) financial information and operating data of the general type included in the Sale and Offering Documents for the Bonds of such series, as specified in any Participating Member's approval of such Sale and Offering Documents pursuant to Section 3.02 hereof, and (2) audited general purpose financial statements of any Participating Member, if then

available. Any financial statements so to be provided shall be (1) prepared in accordance with generally accepted accounting principles for governmental agencies or such other accounting principles as any Participating Member may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if any Participating Member commissions an audit of such statements and the audit is completed within the period during which it must be provided. If the audit of such financial statements is not complete within such period, then any Participating Member shall provide unaudited financial statements within the required period, and shall provide audited financial statements for the applicable Fiscal Year to the MSRB, when and if the audit report on each statement becomes available.

If any Participating Member changes its fiscal year, it will notify the trustee or paying agent and the MSRB in writing of the change (and of the date of the new fiscal year end) prior to the next date by which any Participating Member otherwise would be required to provide financial information and operating data, pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be incorporated by specific reference to any document or specific part thereof (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB or filed with the SEC. Copies of such information and operating data shall be furnished to the Authority at the same time the information and data are furnished to the MSRB.

Section 8.02. Material Event Notices.

A. The following are the events with respect to the Bonds which the Authority must agree to disclose in a timely manner pursuant to the Rule, if “material” under applicable federal securities laws and regulations promulgated thereunder.

- i. Principal and interest payment delinquencies.
- ii. Non-payment related defaults, if material.
- iii. Unscheduled draws on debt service reserves reflecting financial difficulties.
- iv. Unscheduled draws on credit enhancements reflecting financial difficulties.
- v. Substitution of credit or liquidity providers, or their failure to perform.
- vi. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds.
- vii. Modifications to rights of owners, if material.
- viii. Bond calls, if material, and tender offers.

- ix. Defeasances.
- x. Release, substitution, or sale of property securing repayment of the bonds, if material.
- xi. Rating changes.
- xii. Bankruptcy, insolvency, receivership or similar event of the obligated person.
- xiii. The consummation of a merger, consolidation, or acquisition of the obligated person, or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
- xiv. Appointment of a successor or additional trustee or the change of name of a trustee, if material.
- xv. Incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material.
- xvi. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

For these purposes (a) any event described in the immediately preceding paragraph (xii) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the obligated person in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets of business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision of jurisdiction over substantially all of the assets or business of the obligated person, and (b) Participating Members intend the words used in the immediately preceding paragraphs (xv) and (xvi) and the definition of Financial Obligation in this Section to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No 34-83885, dated August 20, 2018.

B. A Participating Member shall, promptly after obtaining actual knowledge of the occurrence of any of the events enumerated in A. above, notify the Authority of such event and provide all information in the format required to satisfy the requirements of the Rule. Further, the

Participating Member shall provide, in a timely manner, notice of any failure by the Participating Member to provide audited financial statements, financial information, and operating data in accordance with Section 8.01 hereof to the MSRB.

Section 8.03. Limitations, Disclaimers, and Amendments.

A Participating Member shall be obligated to observe and perform the covenants specified in this Article in respect of the Bonds of any series for so long as, but only for so long as, the Participating Member remains an “obligated person” with respect to the Bonds of each series within the meaning of the Rule, except that the Participating Member in any event will give notice of any deposit made in accordance with the Bond Resolution that causes Bonds of such series no longer to be Outstanding.

The provisions of this Article are for the sole benefit of (and may be enforced by) the owners and beneficial owners of the Bonds, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Participating Members undertake to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Participating Members’ financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The Participating Members make no representations or warranties concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE PARTICIPATING MEMBERS BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE PARTICIPATING MEMBERS WHETHER NEGLIGENT OR WITHOUT FAULT ON THESE PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Participating Members in observing or performing their obligations under this Article shall comprise a breach of or default under this Amended and Restated Contract for purposes of any other provision of this Amended and Restated Contract.

Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the Authority or the Participating Members under federal and state securities laws.

The provisions of this Article may be amended by the Authority and the Participating Members from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Authority or the Participating Members, but only if (1) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Bonds of the applicable series in the primary offering of the Bonds of such series in compliance with the Rule, taking into account

any amendments or interpretations of the Rule since such offering as well as such changed circumstances, and (2) either (a) the owners of a majority in aggregate principal amount (or any greater amount required by any other provision of this Amended and Restated Contract that authorizes such an amendment) of the outstanding Bonds of each such series affected consent to such amendment, or (b) an entity that is unaffiliated with the Authority or the Participating Members (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interest of the owners and beneficial owners of the Bonds of such series and is permitted by the terms of the Article. If the Authority and the Participating Members so amend the provisions of this Article in connection with the financial or operating data which the Participating Members are required to disclose under Section 8.01 hereof, the Participating Members shall provide a notice of such amendment to be filed in accordance with Section 8.01 hereof, together with an explanation, in narrative form, of the reason for the amendment and the impact of any change in the type of financial information or operating data to be so provided. The Authority and the Participating Members may also amend or repeal the provisions of this Article if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds.

## **ARTICLE IX**

### **Miscellaneous**

#### Section 9.01. Force Majeure.

If by reason of Force Majeure a Participating Member or the Authority shall be rendered unable wholly or in part to carry out its obligations under this Amended and Restated Contract, other than the obligation of each Contracting Party to make the payments required under Section 5.04 of this Amended and Restated Contract, then if such party shall give notice and full particulars of such Force Majeure in writing to the other Contracting Parties and/or the Authority, as appropriate, within a reasonable time after occurrence of the event or cause relied on, the obligation, of the Contracting Party or the Authority giving such notice, so far as it is affected by each Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such Contracting Party or the Authority shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonable within, the control of the party claiming such inability.

#### Section 9.02. Allocation of Water During Drought.

During drought conditions or in any other condition when water cannot be supplied to meet the demands of all customers, the water to be distributed shall be divided among all customers of

stored water from Canyon Reservoir (or other sources) pro rata, according to the amount each may be entitled to, subject to reasonable conservation and drought management plans and requirements based on particular purposes of use of the water, so that preference is given to no one and everyone suffers alike; *provided, however*, that if any Contracting Party is providing raw water to the Authority for treatment by the Project, such water when treated shall be allocated solely to the providing Contracting Party and shall not be subject to pro rata allocation.

Section 9.03. Conservation.

The Authority and Participating Member each agree to provide to the maximum extent practicable for the conservation of water, and each agrees that it will operate and maintain its facilities in a manner that will prevent waste of water. Contracting Parties further agree to implement water conservation and drought management plans applicable to the use of treated water from the Project that are consistent in purpose, provisions and application with those implemented by other Contracting Parties to the extent practicable considering any differences in the legal authority among the Contracting Parties to institute those plans.

Section 9.04. Term of Amended and Restated Contract.

This Amended and Restated Contract shall be effective on and from the Contract Date, and shall continue in force and effect for forty (40) years; provided, however, the term of this Amended and Restated Contract and the expiration date may be extended for succeeding five (5) year periods at the option of one or more of the Contracting Parties for as long as the GBRA Contract or other agreement providing an adequate source of raw water remains in effect. It is understood and agreed by the Authority and each Participating Member that the right to receive treated water hereunder shall continue throughout any renewals or extension of this Amended and Restated Contract. The Authority's obligation to provide treated water services hereunder shall commence from the date the Project becomes operational and functional as certified by the consulting engineers for the Project or on such other date that one or more of the Participating Members receives treated water by virtue of or in exchange for treated water from the Project. This Amended and Restated Contract constitutes the sole agreement between the parties hereto with respect to the Project.

Section 9.05. Approval and Consent.

Unless otherwise provided herein, any approval or consent required by the provisions of this Amended and Restated Contract by a Contracting Party or the Authority shall be evidenced by a written resolution adopted by the governing body of the party giving such approval or consent (or by the General Manager on behalf of the Authority when permitted). Upon receipt of such written resolution duly certified by the appropriate party, the Authority or the Contracting Party can conclusively act on the matter requiring such approval.

Section 9.06. Modification and Amendment.

A. No change, amendment, or modification of this Amended and Restated Contract shall be made or be effective which will affect adversely the prompt payment when due of all money required to be paid by any Contracting Party under this Amended and Restated Contract or any similar contract, and no such change, amendment, or modification shall be made or be effective which would cause a violation of any provisions of any Bond Resolution.

B. This Amended and Restated Contract may be amended upon the written consent of the Authority and all then Contracting Parties; provided, however, no amendment to this Amended and Restated Contract shall impair the rights of any holder of any of the Authority's Bonds.

Section 9.07. Addresses and Notice.

Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties hereto shall, until changed as hereinafter provided, be as follows:

A. If to the Authority, to:

Canyon Regional Water Authority  
850 Lakeside Pass  
New Braunfels, Texas 78130

With a copy to:

Norton Rose Fulbright US LLP  
Attn: Stephanie Leibe  
98 San Jacinto Blvd., Suite 1100  
Austin, Texas 78701  
Phone: (512) 536-2420

B. If to County Line SUD, to:

County Line Special Utility District  
140 Grist Mill Road  
Uhland, Texas 78640

C. If to Crystal Clear SUD, to:

Crystal Clear Special Utility District  
2370 FM 1979  
San Marcos, Texas 78666

D. If to Martindale WSC, to:

Martindale Water Supply Corporation

Post Office Box 175  
Martindale, Texas 78655

E. If to Maxwell SUD, to:

Maxwell Special Utility District  
Post Office Box 158  
Maxwell, Texas 78156

F. If to the City, to:

City of San Marcos, Texas  
Attn: City Manager  
630 East Hopkins  
San Marcos, Texas 78666  
Phone: (512) 393-8100

With a copy to:

McCall, Parkhurst & Horton L.L.P.  
Attn: Bart Fowler  
600 Congress Ave., Suite 1800  
Austin, Texas 78701  
Phone: (512) 478-3805

The Parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other parties hereto.

Section 9.08. State or Federal Laws, Roles, Orders, or Regulations.

This Amended and Restated Contract is subject to all applicable federal and state laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction.

Section 9.09. Remedies Upon Default.

It is not intended hereby to specify (and this Amended and Restated Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by any party hereto and shall be cumulative. Recognizing, however, that the Authority's undertaking to provide and maintain the Project is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, the Authority agrees, in the event of any default on its part, that each Contracting Party shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available. Recognizing that failure in the performance of any Contracting Party's

obligations hereunder could not be adequately compensated in money damages alone, each Contracting Party agrees in the event of any default on its part that the Authority shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to the Authority. Notwithstanding anything to the contrary contained in this Amended and Restated Contract, any right or remedy or any default hereunder, except the right of the Authority to receive the Annual Payment or Annual City Payment which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto or of performance by any other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character, or description, under any circumstance.

Section 9.10. Severability.

The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Amended and Restated Contract or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws of the State or the United States of America, or in contravention of any such laws, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses, or words of this Amended and Restated Contract or the application of such sections, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Amended and Restated Contract shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

Section 9.11. Venue.

All amounts due under this Amended and Restated Contract, including, but not limited to, payments due under this Amended and Restated Contract or damages for the breach of this Amended and Restated Contract, shall be paid and be due in Guadalupe County, Texas, which is the County in which the principal administrative offices of the Authority are located. It is specifically agreed among the parties to this Amended and Restated Contract that Guadalupe County, Texas, is the place of performance of this Amended and Restated Contract; and in the event that any legal proceeding is brought to enforce this Amended and Restated Contract or any provision hereof, the same shall be brought in Guadalupe County, Texas.

Section 9.12. Assignment.

Neither the Authority nor any Contracting Party may assign any interest it may have under this Amended and Restated Contract without the prior written consent of the other parties hereto; provided, however, the foregoing restriction shall not prevent the Authority from taking any action in connection with the issuance of the Bonds to secure the payment of the Bonds with amounts to be received by the Authority under this Amended and Restated Contract.

Section 9.13. Entire Agreement.

This Amended and Restated Contract constitutes the entire agreement among the parties with respect to the sale of treated water by the Authority to the Contracting Parties.

Section 9.14. Applicable Law.

This Amended and Restated Contract shall be governed by and construed in accordance with the laws of the State, and the obligations, rights, and remedies of the parties hereunder shall be determined in accordance with such laws without reference to the laws of any other state or jurisdiction, except for applicable federal laws, rules, and regulations.

Section 9.15. Waiver of Governmental Immunity.

The Contracting Parties under the Amended and Restated Contract agree that the mutual commitment stated in the Amended and Restated Contract to provide water, water treatment services, and funding for utility system improvements constitute an agreement by each party for providing goods and services to the other parties, and that the Amended and Restated Contract, as amended, is subject to Chapter 271, Subchapter I, of the Texas Local Government Code. Pursuant to such authority, each Contracting Party hereby waives governmental immunity.

Section 9.16. No Sale, Lease, or Other Transfer of Contracting Party's Utility System.

Pursuant to the terms of this Amended and Restated Contract, a Contracting Party, to the extent permitted by law, shall not sale, lease, or otherwise transfer any interest in such Contracting Party's utility system without the written consent of the Authority.

Section 9.17. Counterparts.

This Amended and Restated Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*[The remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Amended and Restated Contract to be duly executed as of the day and year first above written.

CANYON REGIONAL WATER AUTHORITY

By: \_\_\_\_\_  
Chairman, Board of Trustees

ATTEST:

\_\_\_\_\_  
Secretary, Board of Trustees

(AUTHORITY SEAL)

COUNTY LINE SPECIAL UTILITY DISTRICT

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

(SEAL)

CRYSTAL CLEAR SPECIAL UTILITY  
DISTRICT

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

(SEAL)

MARTINDALE WATER SUPPLY  
CORPORATION

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

(SEAL)

MAXWELL SPECIAL UTILITY DISTRICT

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

(SEAL)

CITY OF SAN MARCOS, TEXAS

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

(CITY SEAL)

I, the undersigned, City Attorney of the City of San Marcos, Texas, hereby certify that I read, passed upon, and approved as to form and legality the foregoing Amended and Restated Contract prior to its adoption and passage as aforesaid.

\_\_\_\_\_  
City Attorney, City of San Marcos, Texas

**Exhibit A**

**Schedule I**

**Original Contract Allocations**

The table below lists the amounts of production of treated water from the Hays Caldwell Area Plant (the “Plant”), expressed in acre-feet (AF) and gallons-per-day (GPD), that have been contracted with the Participating Members pursuant to the Original Contract, as amended.

In addition to the Plant contract figures, the Authority recognizes a peaking factor of 1.3 (30%) as a logical and necessary requirement and the peaking GPD figures are also listed.

The Authority agrees to supply to each Participating Member, on any given day, the amount of treated water specified in the peaking figures.

The total capability of the Plant is listed in the Maximum Capacity GPD column in the table below. Each Participating Member can be provided with this amount of treated water from the Plant on any given day, at the discretion of the Plant Manager. Additional treated water, over the peaking GPD and up to the Maximum Capacity GPD, will be provided to the Participating Member without penalty; however, any treated water processed over and above the amounts listed in the Maximum Capacity GPD column will incur a System Capacity Fee as determined by the Participating Members.

The total amount of treated water processed through the Plant for each Participating Member must be supported by a sufficient amount of raw water that is under contract to each Participating Member and that water must be available to the Authority for processing at the Plant.

**Hays Caldwell Area Plant – Original Contract**

|                                 | <b>Plant<br/>Capacity<br/>in<br/>AF</b> | <b>Percent<br/>of<br/>Allocation</b> | <b>Contract<br/>Capacity<br/>in<br/>GPD</b> | <b>1.3 Peak<br/>Capacity<br/>in<br/>GPD</b> | <b>Maximum<br/>Capacity<br/>GPD</b> |
|---------------------------------|---|--------------------------------------|---|---|-------------------------------------|
| <b>Hays Caldwell</b>            |   |                                      |   |   |                                     |
| County Line                     | 1,308.00                                | 44.98%                               | 1,167,707                                   | 1,518,019                                   | 2,473,865                           |
| Crystal Clear                   | 500.00                                  | 17.19%                               | 446,371                                     | 580,283                                     | 945,667                             |
| Martindale                      | 200.00                                  | 6.88%                                | 178,548                                     | 232,113                                     | 378,267                             |
| Maxwell                         | 900.00                                  | 30.95%                               | 803,468                                     | 1,044,509                                   | 1,702,201                           |
| <b>Hays Caldwell<br/>Totals</b> | <b>2,908.00</b>                         | <b>100.00%</b>                       | <b>2,596,095</b>                            | <b>3,374,924</b>                            | <b>5,500,000</b>                    |

## Schedule II

### Amended and Restated Contract Allocations

The attached table lists the amount of production of treated water from the Hays Caldwell Area Plant (the “Plant”), expressed in acre-feet (AF) and gallons-per-day (GPD), that have been contracted with the Contracting Parties from the 2020 Project pursuant to the Amended and Restated Contract.

In addition to the Plant contract figures, the Authority recognizes a peaking factor of 1.3 (30%) as a logical and necessary requirement and the peaking GPD figures are also listed.

The Authority agrees to supply to each Contracting Party, on any given day, the amount of treated water specified in the peaking figures.

The total capacity of the Plant is listed in the Maximum Capacity GPD column in the table below. Each Contracting Party can be provided with this amount of treated water from the Plant on any given day, at the discretion of the Plant Manager. Additional treated water, over the peaking GPD and up to the Maximum Capacity GPD, will be provided to the Contracting Party without penalty; however, any treated water processed over and above the amounts listed in the Maximum Capacity GPD column will incur a System Capacity Fee as determined by the Contracting Parties.

The total amount of treated water processed through the Plant for each Contracting Party must be supported by a sufficient amount of raw water that is under contract to each Contracting Party and that raw water must be available to the Authority for processing at the Plant.

#### Hays Caldwell Area Plant – Amended and Restated Contract

|                      | <b>Plant<br/>Capacity<br/>in<br/>AF</b> | <b>Percent<br/>of<br/>Allocation</b> | <b>Contract<br/>Capacity<br/>in<br/>GPD</b> | <b>1.3 Peak<br/>Capacity<br/>in<br/>GPD</b> | <b>Maximum<br/>Capacity<br/>GPD</b> |
|----------------------|---|--------------------------------------|---|---|-------------------------------------|
| <b>Hays Caldwell</b> |   |                                      |   |   |                                     |
| County Line          | 1,308.00                                | 29.2748%                             | 1,167,707                                   | 1,518,019                                   | 1,610,116                           |
| Crystal Clear        | 500.00                                  | 11.1910%                             | 446,371                                     | 580,283                                     | 615,488                             |
| Martindale           | 446.00                                  | 9.9821%                              | 398,163                                     | 517,612                                     | 549,015                             |
| Maxwell              | 900.00                                  | 20.1430%                             | 803,468                                     | 1,044,509                                   | 1,107,878                           |
| San Marcos           | 1,314.00                                | 29.4090%                             | 1,173,064                                   | 1,524,983                                   | 1,617,502                           |
| <b>Hays Caldwell</b> |   |                                      |   |   |                                     |
| <b>Totals</b>        | <b>4,468.00</b>                         | <b>100.00%</b>                       | <b>3,988,773</b>                            | <b>5,185,405</b>                            | <b>5,500,000</b>                    |

## **Exhibit B**

### Points of Delivery

Crystal Clear Special Utility District

Elevated tank at Guadalupe County Road 1978 from the Hays/Caldwell County Project

Maxwell Special Utility District

Intersection of Highway 80 and FM 1984

County Line Special Utility District

Intersection of FM 1966 and Highway 21

Martindale Water Supply Corporation

Intersection of FM Highway 80 at Martindale City limits

City of San Marcos, Texas

Upon exit from the Hays Caldwell Area Plant

## **Exhibit C**

### Special Provisions

#### Special Provisions Related to the Martindale Water Supply Corporation (“Martindale WSC”)

The Contracting Parties understand and agree that under the terms of this Amended and Restated Contract the Martindale WSC independently owns water right Certificate of Adjudication 18-3887D which authorizes the diversion of 255.84 acre-feet of water from the San Marcos River at the Project’s diversion point and that this 255.84 acre-feet forms an integral part of its 446.00 acre-foot Plant Capacity share as set out in Exhibit A, Schedule II.

#### Special Provisions Related to the City of San Marcos, Texas (the “City”)

Notwithstanding the requirements of Section 4.06, the Authority shall deliver treated water to the Point(s) of Delivery for the City at a pressure within a range mutually agreed upon by the Authority and the City.

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## Legislation Text

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**File #:** Res. 2020-226R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-226R, approving a Change in Service to the agreement with GDS Associates, Inc. relating to a utility rate study to increase the contract amount by \$62,000.00 for a total contract amount of \$142,000.00; authorizing the City Manager or his designee to execute the documents necessary to implement the Change in Service; and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** Finance Department, Victoria Runkle, Interim Director (by Lynda Williams, Purchasing Manager)

**Amount & Source of Funding**

**Funds Required:** \$62,000

**Account Number:** 21006322 52230, 22006335 52230

**Funds Available:** [Click or tap here to enter text.](#)

**Account Name:** Professional Services

**Fiscal Note:**

**Prior Council Action:** June 4, 2019, Res. 2019-202R, Utility Rate Study contract 219-119 approved for the amount of \$80,000.00.

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

Economic Development - Choose an item.

Environment & Resource Protection - Choose an item.

Land Use - Choose an item.

Neighborhoods & Housing - Choose an item.

Parks, Public Spaces & Facilities - Choose an item.

- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

In June 2019, GDS Associates, Inc. was selected from evaluations conducted for RFP 219-119. The initial agreement term is for two-years and is for the purpose of preparing a comprehensive water, wastewater, and electric rate study, including model development. The intent of the study is to independently analyze and assess the City's current rate structure, determine an updated cost of service, and provide recommendation for equitable, sustainable cost recovery by customer class. The City updates the rate modeling annually and forecasts revenues, expenses, and anticipated rates for a ten (10) year period.

Analysis on the City's current rate models has proven to be more extensive. In addition, the consultant was directed to perform additional services for Project Big Hat. This request is for approval to increase GDS' scope of services for an additional \$62,000.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends increase of contract 219-119 Utility Rate Study for additional services in the amount of \$62,000 for a total contract amount of \$142,000.

**RESOLUTION NO. 2020-XXR**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A CHANGE IN SERVICE TO THE AGREEMENT WITH GDS ASSOCIATES, INC. (CONTRACT NO. 219-119) FOR A UTILITY RATE STUDY TO INCREASE THE CONTRACT AMOUNT BY \$62,000.00 FOR A TOTAL CONTRACT AMOUNT OF \$142,000.00; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE APPROPRIATE DOCUMENTS TO IMPLEMENT THE CHANGE IN SERVICE; AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** A Change in Service to the agreement with GDS Associates, Inc. (Contract No. 219-119) for a utility rate study to increase the contract amount by \$62,000.00 for a total contract amount of \$142,000.00 is approved.

**PART 2.** The City Manager or his designee is authorized to execute the appropriate documents to implement the change in service.

**PART 3.** This resolution will be in full force and effect immediately from and after its passage.

**ADOPTED** on October 20, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

**EXHIBIT B**  
**AUTHORIZATION OF CHANGE IN SERVICE**

|   |  |                             |
|---|--|-----------------------------|
| <b>CONTRACT NUMBER / CONTRACT NAME:</b> | 219-119 Utility Rate Study                                       |                             |
| <b>CITY REPRESENTATIVE:</b>             | Melissa Neel, Assistant Finance Director                         |                             |
| <b>CONTRACTOR:</b>                      | GDS Associates, Inc.   |                             |
| <b>CONTRACT EFFECTIVE DATE:</b>         | June 12, 2019 thru June 11, 2021 with 6 (1) year renewal options |                             |
| <b>THIS AUTHORIZATION DATE:</b>         | October 20, 2020   | <b>AUTHORIZATION NO.: 1</b> |

**DESCRIPTION OF WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES:**

The Agreement is hereby amended to include additional services as directed by the City to include but not limited to filing breakdown costs for project Big Hat and added deliverables for the utility rate study pursuant to Attachment A.

|   |           |  |
|---|-----------|--|
| Original Contract Amount:                         | \$80,000  |  |
| Previous Increases/Decreases in Contact Amount:   | 0.00      |  |
| <b>This Increase/Decrease in Contract Amount:</b> | \$62,000  |  |
| Revised Contract Amount:                          | \$142,000 |  |

**CONTRACTOR: GDS Associates Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Chuck Loy, CPA, GDA Associates Inc. Principal  
Print Full Name / Title (if not in individual capacity)

**CITY: CITY OF SAN MARCOS, TX**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Bert Lumbreras, City Manager  
Print Name / Title

*City Department Use Only Below This Line (PM, etc.).*

| Account Number(s): | Amount | Date |
|--------------------|--------|------|
| #                  | \$     |      |
|                    |        |      |
|                    |        |      |

Attachment A to 219-119  
GDS Associates, Inc.

Below we describe a proposed scope of work and our estimate of costs for the change in service. We have reduced the estimated cost of the electric COSS since the last time it was sent over after further deliberation and review of the data we have on hand.

### Electric COSS \$20k

- Review and allocate FY21 budget costs to existing electric classes using customer, usage and demand information used in recent rate model update
- Recommend treatment of purchased power expense recovery.
- Minor redesign of rates to eliminate unwarranted subsidies, balance fixed/volumetric recovery, and mitigate any impacts caused by changes to PCRf. This estimate does not anticipate the formation of new rate classes or changes to basic rate design.
- Provide report to CUAB/City Council on methodology and recommendations.

### Provide new model \$12k

Below are the items that we would include in a standard model, with a few modifications to meet your needs as I understand them. This is intended to ensure that everyone is on the same page and any additional requirements of the City that would affect the cost. As we are very familiar with your system of accounts and specific issues and have this information, we can get this turned around quickly:

### INPUTS

- Budgeted expense (budget year) at the **department level with the exception of:**
  - purchased power expenses (entered as total per year for forecast period)
  - other revenues
    - Reclaimed water annual revenues (entered as total each year in forecast period)
    - Wholesale water annual revenues (entered as total each year in forecast period)
    - Ferguson revenues (entered as total each year for forecast period)
    - Transfers (budget year, escalated using escalation factor)
    - Misc. revenues (budget year, escalated using escalation factor)
    - PCRf revenues (entered as total each year for forecast period *or* calculated)
  - Transfer to capital reserves at utility level (entered as a total each year for forecast period)
  - purchased water/water treatment expense (entered as a total each year for forecast period)
  - Shared costs split between water/wastewater (budget year, entered as total for each utility)
  - Franchise fee revenues (calculated off of revenues, but net zero against franchise expense)
- Projected debt service at the utility level (entered as total each year for forecast period) – alternatively can be calculated.
- Projected capital expense bone by utility funds at the utility level (entered as total per year for forecast period)
- Ability to adjust total utility expenses or debt service on an annual basis for forecast period. (e.g. add \$500k to overall electric expense in year 2 or add \$1 million of debt service expense to water). Any other adjustment will be made to inputs discussed above.
- Starting fund balances at utility level (budget year)
- Total number of annual bills for each class (most recent year)
- Total usage by tier for each class (most recent year)
- Total billed demand for classes with demand-based charges (most recent year)
- Current rates in effect
- Escalation rate for overall expense increase (applied to all expenses not individually listed above)
- Escalation rate for customer growth (applied to total number of customers to determine bills/usage)
- Rate increase instituted by year by utility (input in model)

### OUTPUTS

- Total revenue shortfall/excess for each forecast year at the utility level shown calculated as:

**Revenues** = Calculated base rate revenues + Other revenues (Misc., Ferguson, PCRF, etc.)

**less Expenses** = Budgeted expenses (excl. debt) + purchased power/water + debt service + capital outlay + other expenses

Each item above shown on separate row

- Debt service coverage ratio at the utility level for each forecast year
- Period beginning/ending overall fund balance at the utility level for each forecast year
- Future base rates and average bill by rate class for each forecast year. Electric average bills shown both with and without the cost of power.

#### **OTHER REQUIREMENTS/COMMENTS**

- Given the level of information we are given, we will not be able to tie to your CAFR. A huge amount of time (both by SM staff and GDS) was spent trying to determine why results differed from what was the CAFR and no satisfactory conclusion was ever reached. If we are expected to match CAFR results for the historical years used to test the model, we will need a reconciliation of the documents we are provided to the CAFR amounts so we know where the discrepancy lies. If no reconciliation to the CAFR amounts for FY19 or FY20 is provided, GDS will be responsible for tie out of model outputs to inputs provided by the city whether testing historical information or looking at future periods.
- City estimate of future usage (used for power cost calculation) can be used instead of escalation of current customers and usage if preferred, which would reduce model complexity.
- Model will have ability to output the product of the actual customer bill, usage and demand information input into the model multiplied by base rates ensure they match the actual revenues recovered over that 12-month period.
- No functionalization or assignment of expenses to customer classes in model.
- An alternative to having debt expense related to future issuances being entered as a lump sum would be to enter (1) debt-funded projects by year (lump sum) *or* (2) incorporate SM project planning document as has been done in the past. This will require a separate worksheet.

We are happy to discuss any additions or modifications to the above. If the City desires additional flexibility in the model (for example, ability to make changes on an account line by line level), we will need to adjust the estimated cost and complexity will be added to the model.

**FY22/FY23 Rate Model Update \$16k total, assumes that this is an update to model as described above.**

**Work in addition to that specified above (like Big Hat or potential unknown model changes) for an estimated amount of \$14,000.**



## Legislation Text

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**File #:** Res. 2020-227R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-227R, approving an Airport Facility Lease Agreement for Commercial Use for Airport property located at 2049 Airport Drive with Gryphon Aviation, Inc for an initial eighteen-month term; authorizing the City Manager or his designee to execute the lease on behalf of the City; and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** General Services

**Amount & Source of Funding**

**Funds Required:** [Click or tap here to enter text.](#)

**Account Number:** [Click or tap here to enter text.](#)

**Funds Available:** [Click or tap here to enter text.](#)

**Account Name:** [Click or tap here to enter text.](#)

**Fiscal Note:**

**Prior Council Action:** [Click or tap here to enter text.](#)

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

Economic Development - Promote & Support Potential of San Marcos Regional Airport

Environment & Resource Protection - Choose an item.

Land Use - Choose an item.

Neighborhoods & Housing - Choose an item.

Parks, Public Spaces & Facilities - Choose an item.

Transportation - Choose an item.

Core Services

Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

Gryphon Aviation (dba Texas State Aviation - no connection to the University) is a flight school that has been based in San Marcos since 1998.

Texas State Aviation's current lease with the City expired on May 31, 2018 with a clause for first right of refusal for continued occupancy under a revised lease. Due to the age of the hangar and associated office space, a Condition Facility Assessment was commissioned to determine the anticipated useful life of the building.

Upon receipt of the report, it was determined that reconstruction of the entire facility was the most economically sound option. Texas State Aviation agreed with this assessment.

Both parties agreed to a short-term lease arrangement whereby Texas State Aviation could continue to operate at San Marcos until they relocate. The airport may immediately begin marketing the property for redevelopment.

The City therefore recommends award of a Facility Lease Agreement for Commercial Use to Gryphon Aviation for 18 months with a lease rate of \$2.50 per square foot (\$2,000 per month). Upon expiration, the lease may continue on a month-to-month basis for no more than six months at an increased PSF rate of \$2.75 (\$2,200 per month).

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Texas Aviation Partners and City staff recommends award of a Facility Lease Agreement for the use of 2049 Airport Drive for a term of 18 months in the amount of \$2,000 per month.

**RESOLUTION NO. 2020-714R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN AIRPORT FACILITY LEASE AGREEMENT FOR COMMERCIAL USE FOR AIRPORT PROPERTY LOCATED AT 2049 AIRPORT DRIVE WITH GRYPHON AVIATION, INC. FOR AN INITIAL EIGHTEEN MONTH TERM; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE LEASE ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The Airport Facility Lease Agreement for Commercial Use for property located at 2049 Airport Drive with Gryphon Aviation, Inc. for an initial eighteen month term (the "Lease Agreement") is hereby approved.

**PART 2.** The City Manager or his designee is authorized to execute the Lease Agreement on behalf of the City.

**PART 3.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on October 20, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

**CITY OF SAN MARCOS, TEXAS  
SAN MARCOS REGIONAL AIRPORT**

**AIRPORT FACILITY LEASE AGREEMENT  
FOR COMMERCIAL USE**

**THIS AIRPORT FACILITY LEASE AGREEMENT FOR COMMERCIAL USE (“*Lease*”)** is made between the City of San Marcos, a municipal corporation of the State of Texas (“*Lessor*” or “*City*”), and Gryphon Aviation, Inc., a Texas corporation (“*Lessee*”).

**ARTICLE 1: LEASE OF PREMISES; ACCEPTANCE OF EXISTING CONDITIONS;  
COMPLIANCE WITH REGULATIONS**

- 1.01 Airport. Lessor is the owner of the San Marcos Regional Airport (the “*Airport*”), situated in Caldwell County, Texas, by virtue of deeds from the United States of America.
- 1.02 Demise. For and in consideration of, and subject to, the terms, conditions and covenants herein, Lessor hereby demises and leases unto Lessee, and Lessee hereby leases from Lessor, the following described real property (hereinafter referred to as the “*Leased Premises*”), located at the Airport in Caldwell County, Texas:
- a. a 9,600 square foot hangar facility with an address of 2049 Airport Drive (the “*Hangar*”), the location of which is more particularly described in Exhibit A attached hereto.
- 1.03 Acceptance. Lessee acknowledges that, subject to Lessor’s obligations under paragraph 1.05 below: (i) Lessor makes no representations or warranty regarding the suitability of the Leased Premises for Lessee’s intended purposes, or the presence of environmental, geologic, or other site conditions that may affect Lessee’s use of the Leased Premises; and (ii) Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes.
- 1.04 Rules and Regulations; Minimum Standards. Lessee agrees to comply with the (i) San Marcos Regional Airport Rules and Regulations (the “*Rules and Regulations*”), and (ii) San Marcos Regional Airport Minimum Standards (the “*Minimum Standards*”). Provided the same do not impair the material rights of Lessee hereunder or adversely affect Lessee’s ability to use the Leased Premises for the Authorized Use (as defined below), Lessor has the right to amend and/or restate the Rules and Regulations and/or the Minimum Standards and Lessee shall comply with the same.
- 1.05 Airport Operation. During the Term, Lessor covenants and agrees to operate and maintain the Airport and appurtenant facilities (including, without limitation, runways, taxiways, landing areas, entrance roads, driveways and existing parking lots leading to and/or contiguous to the Leased Premises) as a public airport consistent with, at a minimum, current operations and the “sponsor” assurances given by Lessor to the United States of America and, as applicable, the State of Texas. In connection with such sponsor assurances, Lessee agrees that this Lease and Lessee’s rights and privileges hereunder shall be subordinate to such sponsor assurances.
- 1.06 Ingress and Egress. Lessor agrees that Lessee, its officers, directors, agents, representatives, contractors, employees, invitees and licensees shall have the right of ingress and egress to and from the Leased Premises by means of roadways and gated entrances owned by the City for automobiles

and taxiways at the Airport for aircraft, including access during the construction phase of Airport improvements, unless otherwise agreed to in writing by both parties. Security codes for any gated entrances shall be provided to Lessee by Lessor. Such rights shall be consistent with the Rules and Regulations and applicable laws, rules and regulations (“**Applicable Law**”) of the City, the Federal Aviation Administration (“**FAA**”) and other governmental authorities with jurisdiction over the Airport and this Lease.

## **ARTICLE 2: COMMENCEMENT, TERM AND RENT**

- 2.01 **Commencement**. Rental (“**Rent**”) shall accrue commencing upon October 1, 2020 (the “**Effective Date**”). Rent shall be payable at the place designated in Section 2.04.
- 2.02 **Term**. The term of this Lease (“**Term**”) will commence on the Effective Date and will terminate 18 months thereafter, on March 31, 2022 (the “**Expiration Date**”), subject to earlier termination or renewal as provided herein. Upon the expiration, and provided Lessee is not in default, this Lease may continue as month-to-month tenancy at the rate of \$2,200 per month for up to six additional months (the “**Renewal Term**”). Lessee may only terminate the Lease on the last day of any month during the Renewal Term and Lessor must receive written notification of non-renewal at least 60 days prior to the last day of that month.
- 2.03 **Rent**. Lessee hereby promises and agrees to pay Lessor “fixed rent” for use of the Hangar equal to \$2,000 per month.
- Fixed Rent shall be paid, in advance, in monthly installments. Rent will be prorated in the event of any partial calendar month. Lessee, at its option, may make advance payments of Rent up to one (1) year in advance, but there will be no discount for advance payments.
- 2.04 **Form and Place of Payment**. Rent shall be due on or before the first day of each calendar month. A payment shall be considered past due if, after the fifth (5<sup>th</sup>) day of the calendar month in which the payment is due, Lessor has not received full payment by the end of such day (which shall end during normal working hours) physically at 4400 Airport Highway 21, San Marcos, Texas, or by mail to 1807 Airport Drive Suite 200, San Marcos, Texas 78666. Payments submitted via United States Postal Service or other means are considered paid when received, not on the date posted.
- 2.05 **Late Charges**. Payments not received in full by 5:00 p.m. San Marcos, Texas, time, on the fifth (5<sup>th</sup>) day of the calendar quarter in which such Rent is due will be considered late, and a \$15.00 per day late charge will be assessed. In addition, Lessee shall reimburse Lessor for each check that is returned or not honored.
- 2.06 **No Release**. Except as expressly provided herein or in any written consent of Lessor, Lessee (i) will not be released from liability pursuant to this Lease for any reason, including, but not limited to, a change in business conditions, voluntary or involuntary job transfer, change of marital status, loss of content, loss of employment, bad health or the sale or disposition of any aircraft; and (ii) ***is obligated to the terms and conditions of this Lease, including the payment of Rent for the entire Term, subject to earlier termination (except due to an uncured event of default by Lessee) or renewal, as provided herein.***
- 2.07 **Holdover**. In the event Lessee holds over after the expiration of this Lease, such hold over status will create a tenancy from calendar month to calendar month. In such event, Lessee agrees to pay Rent equal to the amount payable on the Expiration Date plus fifty (50%) percent as the month-to-

month holdover rate. Holdover tenancy will be subject to all other terms and conditions of this Lease.

- 2.08 Other Fees and Charges. Provided all other tenants and users at the Airport are required to pay for tie-down and other public Airport Facilities (as defined below) use, Lessee agrees to pay for such use offsite of the Leased Premises, in addition to Rent, in an amount equal to the lowest amount Lessor charges similar tenants and users at the Airport for use.

### **ARTICLE 3: USE AND CARE OF PREMISES**

- 3.01 Authorized Use. During the Term and any renewal thereof, the Leased Premises may be used and occupied by Lessee for the following, and for no other purpose: aviation related activities and business, including, but not limited to, aircraft storage; flight training; and aviation-related office use; and all other uses ancillary to any of the foregoing (herein, the “*Authorized Use*”). In addition to the Authorized Use, with the express consent of Airport Management (as defined below), Lessee may conduct incidental activities on the Leased Premises reasonably related to the Authorized Use. The Leased Premises may not be used for any other purpose without the prior written consent of Lessor, and any commercial use of the Leased Premises not expressly authorized under the terms of this Lease may, at Lessor’s election, be set forth in an amendment hereto or separate contract with Lessor.
- 3.02 Conduct of Business.
- a. Except during any period of repair, reconstruction or Alteration, Lessee shall not fail to occupy and use the Leased Premises for the Authorized Use.
  - b. Lessee agrees to keep the Hangar locked when Lessee is not present therein. If the Hangar is found unlocked by Lessor or Airport Manager, Lessor may overlock the Hangar until Lessee’s lock is replaced, and Lessee notifies Lessor that the Hangar has been locked by Lessee. At all times during the Term, Lessee shall provide Lessor with a currently operative key to the Hangar.
  - c. Lessee covenants and agrees that it shall not make any unlawful use of, nor shall it permit the unlawful use of, the Leased Premises by any person(s).
- 3.03 No Insurance Invalidation; Risk of Lessee. Lessee shall not place or keep anything on the Leased Premises or conduct any unauthorized use of the Leased Premises which invalidates any insurance policy carried on the Leased Premises without Lessor’s prior written consent. Lessee agrees that the risk of loss and damage for property kept, stored or maintained by it within the Leased Premises is that of Lessee.
- 3.04 No Waste or Nuisance; Compliance with Laws. Lessee shall not use or permit the use of the Leased Premises in any manner which results in waste of the Leased Premises or constitutes a nuisance. During the Term and any renewal thereof, Lessee shall comply with Applicable Laws of the City, the FAA and other governmental authorities with jurisdiction over the Leased Premises.
- 3.05 Trash and Debris. Lessee shall keep the Leased Premises and adjacent areas, together with any Lessee signage on or near the Airport, neat, clean and free from dirt and trash at all times; provided, except for the obligation to remove its debris therefrom, Lessee shall have no responsibility for any of the following which are located off of the Leased Premises and used in common with others: ramps, sidewalks, service ways, loading areas and other Airport Facilities. Lessee will provide a dumpster or other suitable trash receptacles for the Leased Premises for use by Lessee, its agents,

contractors, employees, invitees or licensees. Lessee shall arrange for the regular removal of the trash at Lessee's expense.

- 3.06 No Outside Storage. Lessee shall store all equipment, materials and supplies within the confines of the Hangar, and outside storage is specifically prohibited without the advance written consent of Lessor.
- 3.07 Use of Airport Facilities. Lessor agrees that Lessee shall have access to the runways, taxiways, ramps and other Airport Facilities at the Airport to the same extent as other Airport users.
- 3.08 Parking. Lessee shall have nonexclusive use of the public parking lot adjacent to the Hangar for Lessee's employees and customers.

#### **ARTICLE 4: MAINTENANCE AND REPAIR OF PREMISES**

- 4.01 Lessee Obligations. Lessee shall, at its sole cost and expense, perform day-to-day (i.e. non-capital) repair and maintenance of the interior of the Hangar, keeping the same in a safe condition and good state of repair, as existing upon lease commencement, reasonable wear and tear excepted, including, without limitation, items such as light bulbs and bathroom supplies, if applicable, and heating and ventilation equipment to the extent of repairs, but not replacement. In addition, from and after the Effective Date, Lessee shall (a) be responsible for janitorial and pest control services interior of the Hangar, and (b) be responsible for fire alarm monitoring with respect to the Hangar (if applicable). In no event shall Lessee be responsible for the cost of maintenance, repair and/or replacement occasioned by the gross negligence or willful misconduct of Lessor or any person or entity claiming by or through Lessor. Lessee shall keep all fixtures constructed or installed on the Leased Premises by Lessee (collectively, the "*Lessee Improvements*"), in as good condition and repair as existing upon lease commencement, reasonable wear and tear excepted. In addition, Lessee shall be responsible for the cost of repair and/or replacement directly attributable to the gross negligence or willful misconduct of Lessee, its employees, sublessees, concessionaires, contractors, licensees, and invitees. Lessee shall accomplish all repairs and maintenance for which it is responsible routinely and, in all events, within thirty (30) days of receipt of written notice from Lessor. If, within such thirty (30) day period, Lessee fails to make any necessary repairs or perform any other necessary repair and/or maintenance for which Lessee is responsible, Lessor may, as a result of such failure, perform or have such repairs or maintenance performed and notify Lessee of the same, together with evidence of the cost thereof, and the actual, reasonable cost of such work shall be payable by Lessee within thirty (30) days of Lessee's receipt of such notice. **Lessee acknowledges that at no time shall Lessor be obligated to make any repairs to the facility nor shall Lessor provide any credits for repairs made by Lessee.**
- 4.02 Lessor's Right of Access. When no state of emergency exists and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, shall have the right to enter the Leased Premises following reasonable notice to Lessee during Lessee's regular business hours for the purpose of (i) determining whether the Leased Premises are in good condition and repair, or (ii) performing any maintenance or repairs for which Lessor is responsible under this Lease. In an emergency and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, may enter the Leased Premises at any time and without prior notice to Lessee (but written notice of entry and the time and reason therefor, together with the names and contact information of each individual who entered without notice, shall be provided by Airport Management to Lessee within twenty-four [24] hours of any such entry). Lessor and Airport

Management shall minimize disruption to Lessee and operations at the Leased Premises resulting from any access thereto by Lessor or Airport Management.

- a. Consent of Lessee to Market Property. Lessee acknowledges and agrees Lessor may immediately begin marketing the property for redevelopment, including but not limited to placing signs on the property at any time after October 1, 2021, and at any time advertising online, and/or offering tours to interested parties. Notification of any such tours shall follow the same non-emergency notice procedures under paragraph 4.02 above.

#### **ARTICLE 5: CONSTRUCTION, ALTERATIONS, AND FIXTURES**

- 5.01 Alterations. All alterations to the Leased Premises, including alterations which do not require permitting and/or alterations made following a casualty or eminent domain event (“*Alterations*”) must be approved in writing by Lessor and constructed pursuant to plans approved by the City, such approval not to be unreasonably withheld, conditioned or delayed. All such plans, specifications and work shall conform to Applicable Law, including, without limitation, applicable provisions of the Americans With Disabilities Act of 1990, as amended (the “*ADA*”).
- 5.02 Condition on Surrender. Subject to the provisions of Section 4.01, Lessee shall surrender the Leased Premises at the expiration of the Term and any renewal thereof in good condition and repair, normal wear and tear excepted.
- 5.03 No Liens. Lessee shall not permit, or permit any contractor or other person or entity claiming by or through Lessee, to place a lien or similar obligation on the Leased Premises for any alteration, repair, labor performed or materials furnished to the Leased Premises, and Lessee shall promptly (and in all events prior to foreclosure) discharge any such lien or similar obligations. In the event Lessee disputes the lien or obligation, however, Lessee shall have the right to promptly pursue the settlement or litigation thereof without paying the claim until the claim becomes final and subject to no further appeal by Lessee. LESSEE SHALL HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT, AND INDEMNIFY AND DEFEND THE LEASED PREMISES, FROM AND AGAINST ANY CLAIMS, DEMANDS OR SUITS RELATED TO ANY SUCH LIENS OR OBLIGATIONS.
- 5.04 Exterior Lighting and Signage.
  - a. Lessee shall not do any of the following without Lessor’s prior written consent: (i) install any shades or awnings, or any exterior decorations or paintings on any buildings, or (ii) erect, install or change any windows (but Lessee may replace windows with windows of the same size and dimensions), or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of any building. Notwithstanding the foregoing to the contrary, Lessee may install construction signage during construction of permitted or approved Alterations, subject to compliance with applicable sign ordinances and rules.
  - b. Lessee shall, at its sole expense, be responsible for creation, installation and maintenance of all signs, posters or other similar devices. Lessee agrees to pay for the installation, maintenance and repair of any such signs, posters or other similar devices. Any signs, posters or other similar devices placed on the Leased Premises shall be maintained at all times in a safe, neat, sightly and good physical condition.

- c. To the extent applicable, Lessee will install signage indicating that portions of the Leased Premises are included within an aircraft movement area, the location, size and wording of which must be reasonably approved by Lessor prior to installation.

#### **ARTICLE 6: UTILITIES AND TAXES**

6.01 Utilities. Lessee agrees and covenants that it will pay for all utilities used by it on the Leased Premises, including all costs charged or necessary for utility connection fees, the installation of meters, any deposits and any other customary prerequisites for such utility service or replacements thereof. If applicable, ***Lessee must first obtain, in writing, permission from Lessor before undertaking any utility improvements that impact Lessor's property.*** In addition, Lessee shall maintain and repair all utility service lines located on and serving the Leased Premises, except to the extent such maintenance or repair is the obligation of the utility company providing such utility service. Except for its gross negligence or willful misconduct operating in its capacity as a utility provider, Lessor shall not be liable for any interruption or impairment in utility services to the Leased Premises; provided, in the event utility service is not available to the Leased Premises for a period of forty-five (45) consecutive days or longer, Rent shall be abated. Any such abatement shall be applicable to the period between the date of interruption and the date services are resumed.

6.02 Taxes.

- a. In entering into this Lease, Lessee understands that it will be solely responsible for the payment of ad valorem taxes, if any, that are assessed against all or any portion of (i) the Improvements, (ii) Lessee's equipment, inventory and other personal property, including, but not limited to, any Lessee aircraft used for commercial purposes, or (iii) Lessee's interest in the leasehold estate. For the avoidance of doubt, Lessee's obligations under this subsection include payment on behalf of the City of any ad valorem taxes assessed directly to the City.
- b. Lessee shall pay, when due, all sales, excise, income and other taxes levied upon its business operations at the Leased Premises.
- c. Lessee may, at Lessee's expense, contest the validity or amount of any taxes for which Lessee is responsible, in which event, the payment thereof may be deferred, as permitted by Applicable Law, during the pendency of such contest. Notwithstanding the foregoing, no such taxes shall remain unpaid for such length of time as would permit the Premises, any Improvements or any part thereof to be sold or seized by any governmental authority for nonpayment of the same. If at any time, in Lessor's reasonable judgment, it shall become necessary to do so, Lessor may, after notice to Lessee, under protest, pay such amount of the taxes as may be required to prevent a sale or seizure of or foreclosure of any lien created thereon by such item. The amount so paid by Lessor shall be promptly paid on demand by Lessee to Lessor, and, if not so paid, such amount, together with interest thereon from the date advanced until paid, shall be deemed an event of default under Article 15.01(a). Lessee shall promptly furnish Airport Management with copies of all proceedings and documents with regard to any tax contest, and Lessor may, at its expense, participate therein.

**ARTICLE 7: RIGHTS AND PRIVILEGES OF LESSEE**

- 7.01 Grant of Rights. Lessor hereby grants to Lessee the following general rights and privileges, in common with others, all of which shall be subject to the terms, conditions and covenants hereinafter set forth and all of which shall be non-exclusive on the Airport:
- a. The use in common with the public generally of all public Airport Facilities for or in connection with the Authorized Use. For the purposes of this Lease, “*Airport Facilities*” includes, but is not limited to, runways, taxiways, landing areas, ramps, aprons, public automobile parking areas, public roadways, sidewalks, tie-down areas and tie-down facilities and terminal facilities of Lessor located at or near the Airport and used in conjunction therewith, which areas may be expanded following the Effective Date but, to the extent the same are extant on the Effective Date, shall not as to Lessee, unless otherwise expressly permitted herein or agreed in writing by Lessee, be materially diminished or extinguished unless the same are substituted with facilities which are equivalent or better in terms of location and quality. Subject to the express provisions of this Lease, said rights shall be subject to such rules, regulations and laws which now or may hereafter have application at the Airport.
  - b. Nothing in this Lease shall be construed to grant Lessee a permanent right in any particular public Airport Facility should Lessor deem it advantageous to the operation of the Airport to close or relocate any such facility.

**ARTICLE 8: RIGHTS, RESERVATIONS AND OBLIGATIONS OF LESSOR**

- 8.01 Aerial Approaches. Subject to the provisions of this Lease, Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft or diminish the capability of existing or future avigational and/or navigational aids used on the Airport.
- 8.02 Temporary Closure. Lessor reserves the right, consistent with industry standard operations, to temporarily close the Airport or any of the facilities thereon for maintenance, improvement, safety or security of the Airport or the public, or for other aviation-related cause deemed reasonably necessary by Lessor, without being liable to Lessee for any damages caused by disruption of Lessee’s business operations or for any other reason; provided, Lessor shall take reasonable steps to avoid or mitigate interference with the operation of Lessee’s business at the Leased Premises.
- 8.03 Subordination. This Lease is subject to the provisions of any agreement made between Lessor and the United States of America and/or the State of Texas relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal or State of Texas rights or property to Lessor for the development, maintenance and repair of Airport infrastructure. Lessor covenants and agrees that it has no existing agreements with the United State of America or the State of Texas in conflict with the express provisions of this Lease and that it will not enter into any such agreements.
- 8.04 War; National Emergency. During time of war or national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States of America for military or naval use and, if such lease is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended. All Rent or other payments

owing under this Lease shall likewise be suspended until Lessee's normal operations resume at the Leased Premises. In addition, if Lessee's normal business operations are materially affected for a period in excess of one eighty (180) days, Lessee may terminate this Lease upon written notice to Lessor, in which event, except for the obligations of the parties which expressly survive termination of this Lease, the parties shall have no further rights or obligations hereunder except to the extent permitted in, and in accordance with, Section 4.07, Lessee may remove its personal and other property within thirty (30) days after the date of Lessee's notice of termination (the exercise of which right shall not constitute a holdover). Nothing contained in this Lease shall prevent Lessee from pursuing any rights which Lessee may have for reimbursement from the United States of America for the taking of any part of Lessee's leasehold estate or for any loss or damage caused to Lessee by the United States of America.

- 8.05 Operation as Public Airport. Lessor covenants and agrees that during the Term and any renewal thereof it will operate and maintain the Airport and its public Airport Facilities as a public use airport.

### **ARTICLE 9: OPERATION OF THE AIRPORT**

- 9.01 Non-Discrimination Requirements.

- a. It is specifically understood and agreed that this Lease does not grant or authorize an exclusive right for conducting any aeronautical activity which is unlawfully discriminatory. Lessee specifically agrees not to discriminate in its use of the Leased Premises in any manner prohibited by applicable FAA regulations. Lessor agrees not to lease space to other tenants or users at the Airport on terms more favorable (including, without limitation, ground rents, other rents or fees, or length of term) than those contained in this Lease and, if Lessor enters into a lease or other agreement for the same or similar use, the material terms of which are more favorable terms than those contained herein, the more favorable material terms shall be offered to Lessee and, at Lessee's election, this Lease shall be modified to reflect the more favorable material terms.
- b. Lessee, for itself, its personal representative, successors in interest and assigns, as part of the consideration herein, agrees that no person shall be excluded from participation in or denied the benefits of Lessee's use of the Airport on the basis of race, color, national origin, religion, handicap or gender. Lessee further agrees for itself, its personal representatives, successors in interest and assigns that no person shall be excluded from the provision of any service on or in the construction of any improvements or alterations to the Leased Premises on grounds of race, color, national origin, religion, handicap or gender. In addition, Lessee covenants and agrees that it will at all times comply with any applicable requirements imposed by or pursuant to Title 49 of the Code of Federal Regulations, Part 121, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, and with any applicable future amendments thereto.

IF ANY CLAIM ARISES FROM A VIOLATION OF THE FOREGOING NON-DISCRIMINATION COVENANT BY LESSEE, LESSEE AGREES TO HOLD HARMLESS AND INDEMNIFY LESSOR AND AIRPORT MANAGEMENT FROM ANY ACTUAL LOSS OR EXPENSE, BUT NOT CONSEQUENTIAL, SPECIAL OR EXEMPLARY COSTS, EXPENSES OR DAMAGES, INCURRED BY EITHER OF THEM IN CONNECTION WITH SUCH VIOLATION.

- 9.02 Airport Development. The use of a portion of the Airport property for use of the Leased Premises is subordinate to the use of Airport property for aviation purposes. Lessor reserves the right to further develop and improve the Airport as it may see fit. If the future development of the Airport requires the relocation of Lessee's Improvements during the Term and any renewal thereof, Lessor agrees, prior to any such relocation, to (i) provide substitute leased premises comparable to the Leased Premises for the remainder of the Term and renewal thereof, plus any then permitted extensions, (ii) provide substitute leased premises in a location which is consistent with and suitable for Lessee's current business operations at the Leased Premises at the time of such relocation, (iii) minimize disruptions to Lessee's business and operations at the Leased Premises to the extent possible, and (iv) to relocate (subject to Lessee's reasonable agreement, taking into account impacts on Lessee's use thereof) or promptly reconstruct the Improvements at no cost to Lessee.
- 9.03 Aeronautical Services Grant and Requirements. The right to furnish aeronautical services to the public is granted to Lessee by Lessor, subject to the following:
- a. Lessee shall furnish such services on a fair, equal and nondiscriminatory basis to all users.
  - b. Any discounts, rebates or similar price reductions to volume purchasers shall be fair, reasonable and nondiscriminatory.

#### **ARTICLE 10: INSPECTION**

- 10.01 Fire Safety. Lessee will permit the Fire Marshal and building inspector to make inspection of the Leased Premises during regular business hours, except in the event of an emergency, and Lessee will comply with Applicable Laws as required to ensure the Leased Premises comply with fire and building provisions regarding fire safety. Lessee shall maintain, in proper condition, accessible fire extinguishers in number and type required or approved by fire underwriters for the particular hazard involved.

#### **ARTICLE 11: INSURANCE AND INDEMNITY**

- 11.01 Insurance: Lessee shall procure and maintain at all times during the Term and any renewal thereof, in full force and effect, a policy or policies of insurance as set forth in the Minimum Standards as they exist now or may be amended in the future and related to Lessee's lease, use and occupancy of the Leased Premises. Such insurance shall be written so that Lessor must be notified in writing at least thirty (30) days in advance of cancellation or non-renewal, and Lessee shall not amend such insurance in any manner which fails to comply with the Minimum Standards. To the extent not already in Lessor's possession, Lessee shall provide certificates of insurance which satisfy the foregoing within three (3) Business Days of the Effective Date and, thereafter, at least once per calendar year during the Term. All required insurance shall be primary over any other insurance coverage Lessor may have and shall name the City and Airport Management as additional insureds (as applicable, to the extent of their interests therein). Lessor does not carry insurance on Lessee's personal property.
- 11.02 Indemnity and Hold Harmless.

Indemnity. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND ITS OFFICERS, EMPLOYEES, AGENTS (INCLUSIVE OF AIRPORT MANAGEMENT) AND REPRESENTATIVES (COLLECTIVELY, THE "**LESSOR INDEMNIFIED PARTIES**"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES AND COURT

COSTS), LIABILITIES, DAMAGES (EXCLUSIVE OF CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES), CLAIMS, SUITS, ACTIONS AND CAUSES OF ACTIONS. (“**CLAIMS**”), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (i) ANY BREACH OF THIS LEASE BY LESSEE AND ITS AGENTS, CONTRACTORS, EMPLOYEES, LICENSEES AND INVITEES, (COLLECTIVELY THE “**LESSEE PARTIES**”), (ii) ANY FALSE REPRESENTATION OR WARRANTY MADE BY LESSEE HEREIN, AND (iii) ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES IN CONNECTION WITH THIS LEASE, THE CONSTRUCTION, DEVELOPMENT, OPERATION AND USE OF THE LEASED PREMISES AND USE OF AIRPORT IMPROVEMENTS. LESSEE IS NOT EXCUSED OR RELIEVED OF ITS OBLIGATIONS UNDER THIS SECTION IF A CLAIM ARISES OUT OF, OR IS CAUSED BY, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES CONCURRENT WITH THAT OF THE LESSOR INDEMNIFIED PARTIES. LESSEE SHALL ASSUME ON BEHALF OF THE LESSOR INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE LESSOR INDEMNIFIED PARTIES; PROVIDED, HOWEVER, LESSEE IS NOT OBLIGATED TO ASSUME THE DEFENSE OF ANY CLAIMS TO THE EXTENT CAUSED BY LESSOR INDEMNIFIED PARTIES. LESSEE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF THE LESSOR INDEMNIFIED PARTIES OR LESSEE, AS LESSEE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THE EXPENSES THEREOF SHALL BE PAID BY LESSEE SUBJECT TO THE TERMS OF THIS SECTION 11.03a. IN NO EVENT MAY LESSEE ADMIT LIABILITY ON THE PART OF LESSOR OR AIRPORT MANAGEMENT WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF LESSOR’S CITY ATTORNEY.

TO THE EXTENT PERMITTED BY LAW, LESSOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSEE AND ITS OFFICERS, EMPLOYEES, AGENTS (INCLUSIVE OF AIRPORT MANAGEMENT) AND REPRESENTATIVES (COLLECTIVELY, THE “**LESSEE INDEMNIFIED PARTIES**”), FROM AND AGAINST ALL **CLAIMS**, TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (i) ANY BREACH OF THIS LEASE BY LESSOR AND ITS AGENTS, CONTRACTORS, EMPLOYEES, LICENSEES AND INVITEES, (COLLECTIVELY THE “**LESSEE PARTIES**”), (ii) ANY FALSE REPRESENTATION OR WARRANTY MADE BY LESSOR HEREIN, AND (iii) ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSOR PARTIES IN CONNECTION WITH THIS LEASE. LESSOR IS NOT EXCUSED OR RELIEVED OF ITS OBLIGATIONS UNDER THIS SECTION IF A CLAIM ARISES OUT OF, OR IS CAUSED BY, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSOR PARTIES CONCURRENT WITH THAT OF THE LESSEE INDEMNIFIED PARTIES. LESSOR SHALL ASSUME ON BEHALF OF THE LESSEE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE LESSEE INDEMNIFIED PARTIES; PROVIDED, HOWEVER, LESSEE IS NOT OBLIGATED TO ASSUME THE DEFENSE OF ANY CLAIMS TO THE EXTENT CAUSED BY LESSEE INDEMNIFIED PARTIES. LESSOR MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF THE LESSEE INDEMNIFIED PARTIES OR LESSOR, AS LESSOR MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THE EXPENSES THEREOF SHALL BE PAID BY LESSOR SUBJECT TO THE TERMS OF THIS SECTION 11.03.a. IN NO EVENT MAY LESSOR ADMIT LIABILITY ON THE

PART OF LESSEE WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF LESSEE.

- a. Limitation of Liability. The foregoing and any other indemnity herein shall not be interpreted as requiring either Party to indemnify any of the Indemnified Parties from any liability arising solely out of willful misconduct, gross negligence, breach of this Lease or breach of any strict liability obligations by such Indemnified Parties.
- b. Waiver of Consequential Damages. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING CLAIMS OF PERSONS AND ENTITIES CLAIMING BY OR THROUGH ANY OF THEM AND OTHER SIMILAR CLAIMS OR DAMAGES.
- c. Claims Against Lessee. If any claim, demand, suit or other action is made or brought by any person or entity against Lessee arising out of or concerning this Lease, Lessee shall give written notice thereof, to Lessor and Airport Management within ten (10) days after receipt of such claim, demand, suit or action.
- d. Notice. Lessee shall promptly (and in all events within three Business Days) notify Lessor and Airport if it is involved in any material or significant accident on the Leased Premises or Airport. To the extent Lessee's officers are aware of any material or significant defects in Airport runways, taxiways, landing areas, lighting systems or other facilities which may require immediate attention, Lessee shall promptly notify Airport Management of the same (Lessor acknowledging that inspection and reporting is not Lessee's obligation, and that such notice is provided as a courtesy to Lessor).
- e. Security. Lessor does not guarantee police protection or security to Lessee or its property and, (i) Lessor and Airport Management shall not be responsible for injury to any person on the Leased Premises or for harm to any property which belongs to Lessee or those claiming by or through Lessee, or which may be stolen, destroyed or damaged directly attributable to a third party not subject to Lessor's control; and (ii) LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL SUCH CLAIMS.

#### **ARTICLE 12: CONDEMNATION**

- 12.01 Total: If the whole of the Leased Premises is taken by eminent domain, then this Lease shall terminate as of the date the title vests in the condemning authority.
- 12.02 Partial: If a portion of the Leased Premises is taken by eminent domain, and the partial taking renders the Hangar unsuitable for the business of Lessee, then this Lease shall terminate. If the partial taking is not extensive enough to render the Hangar unsuitable for the business of Lessee, then this Lease shall continue in effect with respect to the remainder of the Leased Premises, except that the fixed annual rental shall be reduced and adjusted in an appropriate manner.
- 12.03 Rent. If this Lease is terminated as provided in this section, rent shall be paid up to the earlier of: (a) the date that title vests in the condemning authority, or (b) the date Lessee is unable to utilize the Leased Premises as contemplated by this Lease, and Lessor shall make an equitable refund of any rent paid by Lessee in advance.

- 12.04 Division of Award: Lessor and Lessee shall each be entitled to receive and retain separate awards, or portions of lump sum awards, as are allocated to their respective interests in the condemnation proceeding. Without limiting the generality of the preceding sentence, Lessor has no interest in any award made to Lessee for Lessee's moving and relocation expenses or for the loss of Lessee's leasehold interest, fixtures and other tangible personal property if a separate award for such items is made to Lessee. The termination of this Lease under this section shall not affect the rights of the respective parties to such awards.
- 12.05 Definition of Taking. As used in this Article 12, "taken" or "taking" shall include a sale, transfer or conveyance in avoidance or in settlement of condemnation or a similar proceeding.

### **ARTICLE 13: DAMAGE BY CASUALTY**

- 13.01 Notice Required. Lessee shall give immediate verbal notice (within one [1] hour of knowledge), followed by prompt written notice, to Lessor of any material damage caused to the Leased Premises by fire or other casualty.
- 13.02 Restoration Upon Casualty Loss.
- a. If the Leased Premises are totally destroyed by fire, tornado or other casualty not the fault (in whole or in part) of Lessee or any person in or about the Leased Premises with the express or implied consent of Lessee, Lessor, at its option, may elect to rebuild or terminate the Lease.
  - b. If Lessor elects to not rebuild, this Lease shall terminate, and rent shall be abated from the date of the casualty.
  - c. If Lessor elects to rebuild or repair the Leased Premises, Lessee shall, at its sole cost and risk, be responsible for rebuilding or repairing any damaged Improvements made by Lessee. If the Leased Premises are untenable in whole or in part following such damage, the rent payable during the period in which they are untenable shall be adjusted based on the proportion of the Leased Premises rendered unusable as compared to the entire Leased Premises, but there shall be no abatement of any other amounts payable by Lessee under the terms of this Lease. Prior to the completion of any repairs or construction, Lessee and Lessor shall negotiate a new Lease and the parties shall have no further rights or obligations under this Lease.

### **ARTICLE 14: ASSIGNMENT AND SUBLETTING**

- 14.01 Assignment or Sublease by Lessee. Lessee may not sublease any portion of the Leased Premises or assign any portion of this Lease without prior written consent of Lessor.
- 14.02 Assignment by Lessor. In the event of an assignment by Lessor of all of its interest in the Leased Premises to a person or entity that assumes all of Lessor's obligations pursuant to this Lease, Lessee agrees to look solely to such assignee.

**ARTICLE 15: EVENTS OF DEFAULT AND REMEDIES; TERMINATION**

15.01 Events of Default. The following events shall constitute “events of default” by Lessee under this Lease:

- a. Rent. Lessee fails to pay when due any rental or any other sums or charges due under this Lease, and such failure continues for ten (10) days following written notice thereof (provided, however, that Lessor shall be obligated to give only two such notices in any calendar year, and after such two notices, Lessor will no longer be obligated to give any other notice under this section within such calendar year).
- b. Other Breaches. Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than as described in subsection a above, where such failure continues for a period of thirty (30) days after written notice by Lessor to Lessee; provided, if the nature of Lessee’s obligation which it has failed to perform is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed an event of default if Lessee commences such cure within the thirty (30) day period and, having so commenced, thereafter prosecutes with diligence and completes the curing of such failure or breach within a reasonable time; or
- c. Certain Voluntary Acts. Lessee (i) files, or consents by answer or otherwise to the filing against it if, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction, (ii) makes an assignment for the benefit of its creditors, or (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Lessee or of any substantial part of Lessee’s property; or
- d. Receivership; Bankruptcy. Without consent by Lessee, a court or government authority enters an order, and such order is not vacated within thirty (30) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Lessee or with respect to any substantial part of Lessee’s property, or (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction, or (iii) ordering the dissolution, winding up or liquidation of Lessee; or
- e. Vacation or Failure to Operate. Except in connection with construction, alteration, casualty, eminent domain, act of Lessor, the United States of America or the State of Texas which precludes occupation and use of the Leased Premises or Force Majeure, Lessee vacates or fails to use all or any substantial portion of the Leased Premises for one hundred (120) consecutive days; or
- f. Levy or Attachment. Except as permitted pursuant to a SNDA executed by Lessor, Lessee and Lessee’s lender and/or any related loan documents, this Lease or any estate of Lessee hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days.

15.02 Lessor Remedies. If an event of default occurs and the applicable cure period has expired, at any time after such occurrence and prior to the cure thereof, with or without additional notice or demand and without limiting Lessor’s rights or remedies as a result of the event of default, Lessor may do the following:

- a. Terminate this Lease. Lessor may terminate this Lease on written notice to Lessee. In such event, Lessee shall immediately surrender the Leased Premises to Lessor and, if Lessee fails to do so, Lessor may enter and take possession of the Leased Premises and remove Lessee and any other person occupying the Leased Premises, using reasonable force if necessary, without prejudice to any other remedy it may have for possession or arrearages in Rent and without being liable for any resulting damages. Lessee agrees to pay to Lessor the actual and reasonable amount of related costs and expenses incurred by Lessor, inclusive of reasonable attorney and court costs, within thirty (30) days of Lessor's request for payment, accompanied by evidence of such costs and expenses. If Lessor terminates this Lease, Lessee shall be deemed to have relinquished all right, title and interest in and to all Improvements (exclusive of Lessee's removable trade fixtures and equipment), and the same shall become the property of Lessor.
- b. Relet the Leased Premises and Receive the Rent. Lessor may terminate Lessee's right to possession of the Leased Premises and enjoyment of the rents, issues and profits there from without terminating this Lease or the estate created hereby. If Lessor retakes possession of the Leased Premises as provided herein, Lessor may lease, manage and operate the Leased Premises and collect the rents, issues and profits there from for the account of Lessee, and credit to the satisfaction of Lessee's obligations hereunder the net rental thus received, after deducting therefrom all reasonable, actual out-of-pocket third party costs and expenses of repossessing, leasing, managing and operating the Leased Premises.
- c. Enter and Perform. Lessor shall have the right, but not the obligation, to enter upon the Leased Premises and perform any obligation that Lessee has failed to perform. All reasonable and actual costs and expenses incurred by Lessor in performing such obligations of Lessee shall be deemed additional Rent payable by Lessee to Lessor.
- d. Other Remedies. Lessor may exercise any other right or remedy available to Lessor under this Lease or at law or in equity.
- e. Default by Lessor. Lessor shall be deemed to be in default of this Lease (herein, a "***Lessor Default***") if Lessor shall fail to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept or performed by Lessor and Lessor shall fail to cure such failure within thirty (30) days after delivery by Lessee to Lessor of written notice specifying the failure; provided, so long as the subject default did not occur due to Lessor's breach of an affirmative covenant herein (e.g., pursuant to Sections 1.01, 1.05, 1.06, 3.08, 7.01(a), 9.02 and Article 8), if the failure is curable other than by the payment of money but cannot be cured within such thirty (30) day period, Lessor shall not be in default if Lessor commenced cure of the failure during such thirty (30) day period and thereafter diligently and continuously pursues the cure to its completion.

15.03 Lessee's Remedies. If a Lessor Default occurs, Lessee may at any time thereafter and prior to the cure thereof do any one or more of the following:

- a. Terminate this Lease. Lessee may terminate this Lease by giving Lessor written notice thereof, in which event this Lease and the leasehold estate hereby created and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date of such notice and, except for the obligations of the parties which survive closing and Lessee's rights under b. below (which shall survive termination), the parties shall have no further rights or obligations hereunder; or

b. Other Remedies. Lessee may exercise any other right or remedy available to Lessee under this Lease or under Applicable Law, except as expressly limited by the terms of this Lease.

15.04 Acceptance of Rent. The acceptance by Lessor of Lessee's monthly payments subsequent to the occurrence of any event of default shall be considered to be compensation for Lessee's use and occupancy of the Leased Premises, and shall in no way constitute a waiver by Lessor of its right to exercise any remedy provided for any event of default.

#### **ARTICLE 16: LESSOR'S LIEN**

16.01 Subordination of Lessor's Lien. Upon written request from Lessee, Lessor agrees to reasonably subordinate its statutory and contractual landlord's liens on the Improvements or Lessee's personal property and trade fixtures to the lien of a lender providing financing to the Lessee, consistent with the terms of this Lease.

#### **ARTICLE 17: LESSEE'S MORTGAGE OF LEASEHOLD INTEREST**

17.01 Mortgage of Leasehold Estate. Lessor grants permission to Lessee for the mortgaging of Lessee's leasehold interest in the Leased Premises for the sole purpose of obtaining funding for permanent improvements to the Leased Premises. Lessee will provide written notification to Lessor of each such mortgage within ten (10) days after it is executed. Lessor agrees that any lien in its favor arising under this Lease as to the Leased Premises will be subordinate to the lien of the mortgagee under each such mortgage. This clause is self-operative and no further instrument of subordination need be required by any mortgagee of Lessee. The mortgaging by Lessee of its leasehold interest for any other purpose, however, shall require the advance written approval of Lessor. ***In no event, however, shall any lien be asserted against the underlying fee simple interest of Lessor in the Leased Premises.***

#### **ARTICLE 18: MISCELLANEOUS**

18.01 Gender Neutral. When the singular number is used in this Lease, it will include the plural when appropriate, and the neuter gender will include the feminine and masculine genders when appropriate.

18.02 Severability. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, this Lease will remain in effect, and the remaining provisions will continue in force if they can be given effect without the invalid portion.

18.03 Amendment. This Lease may be amended only by an instrument in writing signed by both parties. This Lease shall apply to and be binding upon the parties and their permitted successors in interest and legal representatives.

18.04 Headings. The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this Lease.

18.05 Nonwaiver of Rights. No waiver of default by either party of any terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

- 18.06 Force Majeure. Whenever a period of time is prescribed for action to be taken by Lessor or Lessee, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes beyond the reasonable control of Lessor or Lessee (herein, “*force majeure*”) shall be excluded from the computation of any such period of time.
- 18.07 Quiet Enjoyment. Lessor represents and warrants that it has the lawful authority to enter into this Lease and has title to the Leased Premises. Lessor further covenants that Lessee shall have and enjoy undisturbed possession of the Leased Premises as long as Lessee performs its obligations under this Lease. This Lease is subject, however, to the rights of the United States of America during periods of national emergency and its right to take all or a portion of the Airport for federal activities, as provided herein.
- 18.08 No Partnership. This Lease shall not be construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is that of Lessor and Lessee.
- 18.09 No Brokers. Lessee warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease, and Lessee agrees to indemnify and hold Lessor and Airport Management harmless from and against any and all costs, expense or liability for commissions or other compensation charges payable to any broker or agent of Lessee with respect to this Lease.
- 18.10 Governing Law; Venue; Dispute Resolution. The parties agree that the laws of the State of Texas shall govern this Lease and that exclusive venue for enforcement of this Lease shall lie in Hays County, Texas. In the event a claim, dispute, or controversy (defined for the purposes of this Lease as “Claim”) arises out of or relates to this Lease, Lessor and Lessee agree that, as a condition precedent to litigation, Lessor (or, at Lessor’s direction, Airport Manager) shall meet and attempt to resolve the matter within five (5) business days of a party’s request.
- 18.11 Charitable Immunity or Exemption. If Lessee is a charitable association, corporation, partnership, individual enterprise or entity and claims immunity to or an exemption from liability for any kind of property damage or personal damage, injury or death, Lessee hereby expressly waives its rights to plead defensively any such immunity or exemption as against Lessor and Airport Management.
- 18.12 Notices. Notices required of either party pursuant to the provisions of this Lease shall be conclusively determined to have been delivered to the other party when (i) hand-delivered to the other party, or (ii) mailed in the United States Mail, postage prepaid, certified, with return receipt requested, to the address specified below:

If to Lessor:

City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666

and

1807 Airport Drive, Suite 200  
San Marcos, Texas 78666

If to Lessee:

Gryphon Aviation, Inc.  
2049 Airport Drive  
San Marcos, Texas 78666  
Attn: Erik Landrum

A party hereto may change its address by giving notice thereof to the other party in conformity with this Section 18.12.

- 18.13 Entire Agreement. This Lease and the exhibits hereto constitute the entire understanding and agreement by the parties hereto concerning the Leased Premises, and any prior or contemporaneous agreement, oral or written, which purports to vary from the terms hereof shall be void.
- 18.14 Action through Airport Management. All parties agree that Lessor may choose to exercise any of its non-delegable powers under this Lease through its Airport Management. Unless Lessor notifies Lessee in writing of new Airport Management, Airport Management is Texas Aviation Partners, LLC, a Texas limited liability company, with an address of 1807 Airport Drive, Suite 200, San Marcos, Texas 78666.
- 18.15 Consent. In any instance in which the consent of one party, or the Airport Management, is required, consideration of the matter in question is to be promptly given, consent not to be unreasonably withheld, conditioned or delayed.
- 18.16 Attorney Fees. Each party will be required to pay its own attorneys' fees incurred in connection with the negotiation of this Lease or any action or proceeding arising between Lessor and Lessee regarding this Lease. Further, except as expressly provided herein, each party waives any and all rights under law or in equity to seek or recover attorney's fees from the other party in any civil or administrative litigation or dispute resolution proceeding for breach of this Lease or to enforce any provision of this Lease.
- 18.17 Recordation. Lessor and Lessee will, at the request of the other, promptly execute a memorandum of lease in recordable form constituting a short form of this Lease, which may be filed for record in the Official Public Records of Caldwell County, Texas. This Lease itself shall not be filed of record.
- 18.18 Reservation of Immunities. TO THE EXTENT PROVIDED IN TEXAS LOCAL GOVERNMENT CODE CHAPTER 271 SUBCHAPTER I, AND OTHER APPLICABLE LAW, LESSOR WAIVES ITS RIGHTS TO ASSERT GOVERNMENTAL IMMUNITY FROM SUIT FOR BREACH OF THIS LEASE BY LESSOR OR LIABILITY FOR CONTRACT CLAIMS ASSERTED BY LESSEE SEEKING THE REMEDIES OF LESSEE SET FORTH HEREIN, INCLUSIVE OF SECTION 15.04. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, LESSOR DOES NOT WAIVE, AND EXPRESSLY RESERVES, ALL IMMUNITIES EXISTING UNDER APPLICABLE LAW AVAILABLE TO LESSOR AS A TEXAS HOME-RULE MUNICIPAL CORPORATION. IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THE FOREGOING WAIVER IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CONTRACT CLAIMS UNDER THIS LEASE.
- 18.19 No Third Party Beneficiaries. This Lease is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any

person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder.

18.20 Survival. Any terms and provisions of this Lease pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Lease shall survive the same.

18.21 Exhibits. The exhibits to this Lease are as follows:

Exhibit A      Location of Hangar

18.22 Termination of Current Lease. Effective as of the Effective Date, the Current Lease (“Lease of Airport Property for a Business Facility” for the hangar located at 2049 Airport Drive) is terminated and the parties shall have no further rights or obligations thereunder.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease effective as of the Effective Date.

**LESSOR:**

CITY OF SAN MARCOS, TEXAS

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

**LESSEE:**

GRYPHON AVIATION, INC., A TEXAS CORPORATION

DocuSigned by:  
By: Erik G Landrum  
Name Printed: Erik G Landrum  
Title: President

**EXHIBIT A**  
Location of Hangar





## Legislation Text

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**File #:** Res. 2020-228R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-228R, approving a month-to-month Airport Facility Lease Agreement for Commercial Use for Airport property located at 4400 Highway 21 with Air Carriage Over Texas, LLC; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** General Services

**Amount & Source of Funding**

**Funds Required:** Click or tap here to enter text.

**Account Number:** Click or tap here to enter text.

**Funds Available:** Click or tap here to enter text.

**Account Name:** Click or tap here to enter text.

**Fiscal Note:**

**Prior Council Action:** Click or tap here to enter text.

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

Economic Development - Promote & Support Potential of San Marcos Regional Airport

Environment & Resource Protection - Choose an item.

Land Use - Choose an item.

Neighborhoods & Housing - Choose an item.

Parks, Public Spaces & Facilities - Choose an item.

Transportation - Choose an item.

Core Services

Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

Air Carriage Over Texas, LLC (ACOT) is a commercial hot air balloon operator that recently relocated from Albuquerque, NM to San Marcos.

ACOT currently operates two balloons with plans to add a third based on demand. Balloons launch at dawn every day (weather permitting) and follow all applicable Federal Aviation Regulations including radio communication requirements.

The City recommends award of a Facility Use Agreement for the use of the large parking lot located at 4400 Highway 21 (Airport Management Offices) for \$35 per balloon, per launch to be paid on a monthly basis. The term of the agreement is month-to-month with a clause for immediate termination by the City for any reason, including but not limited to, safety concerns.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Texas Aviation Partners and City staff recommends award of a Facility Use Agreement for the use of 4400 Highway 21 for the launch of hot air balloons in the amount of \$35 per balloon, per launch.

**RESOLUTION NO. 2020-712R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A MONTH-TO-MONTH AIRPORT FACILITY LEASE AGREEMENT FOR COMMERCIAL USE FOR AIRPORT PROPERTY LOCATED AT 4400 HIGHWAY 21 WITH AIR CARRIAGE OVER TEXAS, LLC; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE LEASE ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The month-to-month Airport Facility Lease Agreement for Commercial Use for property located at 4400 Highway 21 with Air Carriage Over Texas, LLC (the "Lease Agreement") is hereby approved.

**PART 2.** The City Manager or his designee is authorized to execute the Lease Agreement on behalf of the City.

**PART 3.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on October 20, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

**CITY OF SAN MARCOS, TEXAS  
SAN MARCOS REGIONAL AIRPORT**

**AIRPORT FACILITY USE AGREEMENT  
FOR COMMERCIAL USE**

**THIS AIRPORT FACILITY USE AGREEMENT FOR COMMERCIAL USE (“*Use Agreement*”)** is made between the City of San Marcos, a municipal corporation of the State of Texas (“*City*”), and Air Carriage Over Texas, LLC. (“*User*”).

**ARTICLE 1: USE AGREEMENT OF PREMISES; ACCEPTANCE OF EXISTING  
CONDITIONS; COMPLIANCE WITH REGULATIONS**

- 1.01 Airport. The City is the owner of the San Marcos Regional Airport (the “*Airport*”), situated in Caldwell County, Texas, by virtue of deeds from the United States of America.
- 1.02 Demise. For and in consideration of, and subject to, the terms, conditions and covenants herein, City hereby authorizes User to operate a business at the San Marcos Regional Airport and the nonexclusive use of the following described real property for the purpose of launching hot air balloons (hereinafter referred to as the “*Premises*”), located at the Airport in Caldwell County, Texas:
- a. Parking lot with an address of 4400 Highway 21 (the “*Parking Lot*”), the location of which is more particularly described in Exhibit A attached hereto;
- 1.03 Acceptance. User acknowledges that, subject to City’s obligations under paragraph 1.05 below: (i) City makes no representations or warranty regarding the suitability of the Premises for User’s intended purposes, or the presence of environmental, geologic, or other site conditions that may affect User’s use of the Premises; and (ii) User accepts full responsibility for determining the suitability of the Premises for its intended purposes.
- 1.04 Rules and Regulations; Minimum Standards. User agrees to comply with the (i) San Marcos Regional Airport Rules and Regulations (the “*Rules and Regulations*”), and (ii) San Marcos Regional Airport Minimum Standards (the “*Minimum Standards*”). Provided the same do not impair the material rights of User hereunder or adversely affect User’s ability to use the Premises for the Authorized Use (as defined below), City has the right to amend and/or restate the Rules and Regulations and/or the Minimum Standards and User shall comply with the same.
- 1.05 Airport Operation. During the Term, City covenants and agrees to operate and maintain the Airport and appurtenant facilities (including, without limitation, runways, taxiways, landing areas, entrance roads, driveways and existing parking lots leading to and/or contiguous to the Premises) as a public airport consistent with, at a minimum, current operations and the “sponsor” assurances given by City to the United States of America and, as applicable, the State of Texas. In connection with such sponsor assurances, User agrees that this Use Agreement and User’s rights and privileges hereunder shall be subordinate to such sponsor assurances.
- 1.06 Ingress and Egress. City agrees that User, its officers, directors, agents, representatives, contractors, employees, invitees and licensees shall have the right of ingress and egress to and from

the Premises by means of roadways for automobiles unless otherwise agreed to in writing by both parties. Such rights shall be consistent with the Rules and Regulations and applicable laws, rules and regulations (“*Applicable Law*”) of the City, the Federal Aviation Administration (“*FAA*”) and other governmental authorities with jurisdiction over the Airport and this Use Agreement.

## **ARTICLE 2: COMMENCEMENT, TERM AND RENT**

- 2.01 Commencement. User Fees (“*Fee*”) shall accrue commencing upon October 20, 2020 (the “*Effective Date*”). Fees shall be payable at the place designated in Section 2.04.
- 2.02 Term. The term of this Use Agreement (“*Term*”) will commence on the Effective Date and will continue on a month-to-month basis unless terminated by either party by providing written notice of termination. **The City reserves the right to immediately terminate the use of the Premises verbally at any time with or without cause.**
- 2.03 Fee. User hereby promises and agrees to pay City a Fee equal to \$35 per launch, per balloon on a monthly basis. User shall submit a launch log in conjunction with the Fee.
- 2.04 Form and Place of Payment. The monthly Fee is to be made within five (5) days of the last day of the previous month and shall be based on User’s launch activity during the previous month. A payment shall be considered past due if, after the fifth (5<sup>th</sup>) day of the calendar month in which the payment is due, City has not received full payment by the end of such day (which shall end during normal working hours) physically at 4400 Airport Highway 21, San Marcos, Texas, or by mail to 1807 Airport Drive Suite 200, San Marcos, Texas 78666. Payments submitted via United States Postal Service or other means are considered paid when received, not on the date posted.
- 2.05 Late Charges. Payments not received in full by 5:00 p.m. San Marcos, Texas, time, on the fifth (5<sup>th</sup>) day of the calendar month in which such Fee is due will be considered late, and a \$15.00 per day late charge will be assessed. In addition, User shall reimburse City for each check that is returned or not honored.
- 2.06 No Release. User (i) will not be released from liability pursuant to this Use Agreement for any reason, including, but not limited to, a change in business conditions, voluntary or involuntary job transfer, change of marital status, loss of content, loss of employment, bad health or the sale or disposition of any hot air balloon; and (ii) ***is obligated to the terms and conditions of this Use Agreement, including the payment of Fees as provided herein.***
- 2.07 Other Fees and Charges. Provided all other tenants and users at the Airport are required to pay for tie-down and other public Airport Facilities (as defined below) use, User agrees to pay for such use offsite of the Premises, in addition to the monthly Fee, in an amount equal to the lowest amount City charges similar tenants and users at the Airport for use.

## **ARTICLE 3: USE AND CARE OF PREMISES**

- 3.01 Authorized Use. During the Term and any renewal thereof, the Premises may be used by User for the following, and for no other purpose: the launch of hot air balloons and temporary customer parking (herein, the “*Authorized Use*”). In addition to the Authorized Use, with the express consent of Airport Management (as defined below), User may conduct incidental activities on the Premises reasonably related to the Authorized Use. The Premises may not be used for any other purpose without the prior written consent of City, and any commercial use of the Premises not expressly authorized under the terms of this Use Agreement may, at City’s election, be set forth in an

amendment hereto or separate contract with City. Use of Airport Management office and restroom facilities is prohibited.

- 3.02 Conduct of Business. User covenants and agrees that it shall not make any unlawful use of, nor shall it permit the unlawful use of, the Premises by any person(s).
- 3.03 No Insurance Invalidation; Risk of User. User shall not place or keep anything on the Premises or conduct any unauthorized use of the Premises which invalidates any insurance policy carried on the Premises without City's prior written consent. User agrees that the risk of loss and damage for property kept, stored or maintained by it within the Premises is that of User.
- 3.04 No Waste or Nuisance; Compliance with Laws. User shall not use or permit the use of the Premises in any manner which results in waste of the Premises or constitutes a nuisance. During the Term and any renewal thereof, User shall comply with Applicable Laws of the City, the FAA and other governmental authorities with jurisdiction over the Premises.
- 3.05 Trash and Debris. User shall keep the Premises and adjacent areas, together with any User signage on or near the Airport, neat, clean and free from dirt and trash at all times.
- 3.06 No Outside Storage. Outside storage is specifically prohibited without the advance written consent of City.
- 3.07 Parking. User shall have nonexclusive use of the public parking spaces adjacent to the Airport Management office for User's employees and customers during launch operations. The City reserves the right to assign specific areas for User's vehicle parking.

**ARTICLE 4: MAINTENANCE AND REPAIR OF PREMISES**

- 4.01 User Obligations. User shall, at its sole cost and expense, maintain the Premises in good, clean condition. The User shall comply with all governmental laws, ordinances, and regulations that apply to the Premises, at its sole cost and expense. User shall maintain the Premises, with the exception of normal wear and tear and gaining consistent with normal usage and passage of time, and will repair damages to any part of the Premises caused by the actions or by the negligence or misconduct of User, its agents, servants, employees, contractors, subcontractors, licensees, patrons, invitees, or trespassers.
- 4.02 City's Right of Access. City and Airport Management, acting by and through their authorized representatives, shall have the right to access the Premises for the purpose of (i) determining whether the Premises are in good condition and repair, or (ii) performing any maintenance or repairs for which City is responsible under this Use Agreement.

**ARTICLE 5: CONSTRUCTION, ALTERATIONS, AND FIXTURES**

- 5.01 Alterations. The User shall not make any alterations, additions, or improvements to the Premises without the prior written consent of City. All buildings, structures, improvements, alterations, additions, and fixtures which may be made or installed upon the Premises shall become the property of the City upon the expiration of the term of this Use Agreement unless the City requests their removal, in which event the User shall remove them and restore the Premises at the User's expense.
- 5.02 Condition on Surrender. Subject to the provisions of Section 4.01, User shall surrender the Premises in good condition and repair, normal wear and tear excepted.

- 5.03 No Liens. User shall not permit, or permit any contractor or other person or entity claiming by or through User, to place a lien or similar obligation on the Premises for any alteration, repair, labor performed or materials furnished to the Premises, and User shall promptly (and in all events prior to foreclosure) discharge any such lien or similar obligations. In the event User disputes the lien or obligation, however, User shall have the right to promptly pursue the settlement or litigation thereof without paying the claim until the claim becomes final and subject to no further appeal by User. USER SHALL HOLD HARMLESS CITY AND AIRPORT MANAGEMENT, AND INDEMNIFY AND DEFEND THE PREMISES, FROM AND AGAINST ANY CLAIMS, DEMANDS OR SUITS RELATED TO ANY SUCH LIENS OR OBLIGATIONS.
- 5.04 Exterior Lighting and Signage. No signs, posters, or other similar devices shall be placed on any portion of the Premises without the prior written consent of the City. User shall, at its sole expense, be responsible for creation, installation and maintenance of all signs, posters or other similar devices. User agrees to pay for the installation, maintenance and repair of any such signs, posters or other similar devices. Any signs, posters or other similar devices placed on the Premises shall be maintained at all times in a safe, neat, slightly and good physical condition and shall be removed from the Premises immediately upon receipt of instructions for the removal of same from the City.

#### **ARTICLE 6: TAXES**

- 6.01 Taxes.
- a. In entering into this Use Agreement, User understands that it will be solely responsible for the payment of ad valorem taxes, if any, that are assessed against all or any portion of User's equipment, inventory and other personal property, including, but not limited to, any hot air balloons used for commercial purposes.
  - b. User shall pay, when due, all sales, excise, income and other taxes levied upon its business operations at the Premises.
  - c. User may, at User's expense, contest the validity or amount of any taxes for which User is responsible, in which event, the payment thereof may be deferred, as permitted by Applicable Law, during the pendency of such contest. Notwithstanding the foregoing, no such taxes shall remain unpaid for such length of time as would permit the Premises, any Improvements or any part thereof to be sold or seized by any governmental authority for nonpayment of the same. If at any time, in City's reasonable judgment, it shall become necessary to do so, City may, after notice to User, under protest, pay such amount of the taxes as may be required to prevent a sale or seizure of or foreclosure of any lien created thereon by such item. The amount so paid by City shall be promptly paid on demand by User to City, and, if not so paid, such amount, together with interest thereon from the date advanced until paid, shall be deemed to be additional Rent. User shall promptly furnish Airport Management with copies of all proceedings and documents with regard to any tax contest, and City may, at its expense, participate therein.

#### **ARTICLE 7: RIGHTS AND PRIVILEGES OF USER**

- 7.01 Grant of Rights. City hereby grants to User the following general rights and privileges, in common with others, all of which shall be subject to the terms, conditions and covenants hereinafter set forth and all of which shall be non-exclusive on the Airport. Nothing in this Use Agreement shall be construed to grant User a permanent right in any particular public Airport Facility should City deem it advantageous to the operation of the Airport to close or relocate any such facility.

**ARTICLE 8: RIGHTS, RESERVATIONS AND OBLIGATIONS OF CITY**

- 8.01 Aerial Approaches. Subject to the provisions of this Use Agreement, City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent User from erecting or permitting to be erected any building or other structure which, in the opinion of City, would limit the usefulness of the Airport or constitute a hazard to aircraft or diminish the capability of existing or future avigational and/or navigational aids used on the Airport.
- 8.02 Temporary Closure. City reserves the right, consistent with industry standard operations, to temporarily close the Airport or any of the facilities thereon for maintenance, improvement, safety or security of the Airport or the public, or for other aviation-related cause deemed reasonably necessary by City, without being liable to User for any damages caused by disruption of User's business operations or for any other reason; provided, City shall take reasonable steps to avoid or mitigate interference with the operation of User's business at the Premises.
- 8.03 Subordination. This Use Agreement is subject to the provisions of any agreement made between City and the United States of America and/or the State of Texas relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal or State of Texas rights or property to City for the development, maintenance and repair of Airport infrastructure. City covenants and agrees that it has no existing agreements with the United State of America or the State of Texas in conflict with the express provisions of this Use Agreement and that it will not enter into any such agreements.
- 8.04 War; National Emergency. During time of war or national emergency, City shall have the right to lease the landing area or any part thereof to the United States of America for military or naval use and, if such lease is executed, the provisions of this Use Agreement, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.
- 8.05 Operation as Public Airport. City covenants and agrees that during the Term and any renewal thereof it will operate and maintain the Airport and its public Airport Facilities as a public use airport.

**ARTICLE 9: OPERATION OF THE AIRPORT**

- 9.01 Non-Discrimination Requirements.
- a. It is specifically understood and agreed that this Use Agreement does not grant or authorize an exclusive right for conducting any aeronautical activity which is unlawfully discriminatory. User specifically agrees not to discriminate in its use of the Premises in any manner prohibited by applicable FAA regulations.
- b. User, for itself, its personal representative, successors in interest and assigns, as part of the consideration herein, agrees that no person shall be excluded from participation in or denied the benefits of User's use of the Airport on the basis of race, color, national origin, religion, handicap or gender. User further agrees for itself, its personal representatives, successors in interest and assigns that no person shall be excluded from the provision of any service on or in the construction of any improvements or alterations to the Premises on grounds of race, color, national origin, religion, handicap or gender. In addition, User covenants and agrees that it will at all times comply with any applicable requirements imposed by or pursuant to Title 49 of the Code of Federal Regulations, Part 121, Non-

Discrimination in Federally Assisted Programs of the Department of Transportation, and with any applicable future amendments thereto.

IF ANY CLAIM ARISES FROM A VIOLATION OF THE FOREGOING NON-DISCRIMINATION COVENANT BY USER, USER AGREES TO HOLD HARMLESS AND INDEMNIFY CITY AND AIRPORT MANAGEMENT FROM ANY ACTUAL LOSS OR EXPENSE, BUT NOT CONSEQUENTIAL, SPECIAL OR EXEMPLARY COSTS, EXPENSES OR DAMAGES, INCURRED BY EITHER OF THEM IN CONNECTION WITH SUCH VIOLATION.

- 9.02 Airport Development. The City reserves the right to further develop and improve the Airport as it may see fit.
- 9.03 Aeronautical Services Grant and Requirements. The right to furnish aeronautical services to the public is granted to User by City, subject to the following:
- a. User shall furnish such services on a fair, equal and nondiscriminatory basis to all users.
  - b. Any discounts, rebates or similar price reductions to volume purchasers shall be fair, reasonable and nondiscriminatory.

#### **ARTICLE 10: INSPECTION**

- 10.01 Fire Safety. User will permit the Fire Marshal to make inspection of the Premises during regular business hours, except in the event of an emergency, and User will comply with Applicable Laws as required to ensure the Premises comply with fire and building provisions regarding fire safety. User shall maintain, in proper condition, accessible fire extinguishers in number and type required or approved by fire underwriters for the particular hazard involved.

#### **ARTICLE 11: INSURANCE AND INDEMNITY**

- 11.01 Liability Insurance: User shall procure and maintain at all times during the Term and any renewal thereof, in full force and effect, a policy or policies of commercial general liability insurance as set forth in the Minimum Standards and related to User's lease, use and occupancy of Premises. Such insurance shall be written so that City must be notified in writing at least thirty (30) days in advance of cancellation or non-renewal, and User shall not amend such insurance in any manner which fails to comply with the Minimum Standards. To the extent not already in City's possession, User shall provide certificates of insurance which satisfy the foregoing within three (3) Business Days of the Effective Date and, thereafter, at least once per calendar year during the Term. All required insurance shall be primary over any other insurance coverage City may have and shall name the City and Airport Management as additional insureds (as applicable, to the extent of their interests therein).
- 11.02 Casualty Coverage: User shall procure and maintain at all times during the Term and any renewal thereof, in full force and effect, a policy or policies of fire and extended coverage for all contents, goods, stock and any personal property which is or may be situated upon the Premises, to the extent the same are insurable by User. Such insurance shall be written so that City must be notified in writing at least thirty (30) days in advance of cancellation or non-renewal, and User shall not amend such insurance in any manner which fails to comply with this section and the Minimum Standards. To the extent not already in City's possession, User shall provide certificates of insurance which satisfy the foregoing within three (3) Business Days of the Effective Date and, thereafter, at least

once per calendar year during the Term. All required insurance shall be primary over any other insurance coverage City may have and shall name the City and Airport Management as additional insureds (as applicable, to the extent of their interests therein).

11.03 Indemnity and Hold Harmless.

- a. Indemnity. USER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, EMPLOYEES, AGENTS (INCLUSIVE OF AIRPORT MANAGEMENT) AND REPRESENTATIVES (COLLECTIVELY, THE “**INDEMNIFIED PARTIES**”), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES, EXPENSES AND COURT COSTS), LIABILITIES, DAMAGES (EXCLUSIVE OF CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES), CLAIMS, SUITS, ACTIONS AND CAUSES OF ACTIONS. (“**CLAIMS**”), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (i) ANY BREACH OF THIS USE AGREEMENT BY USER AND ITS AGENTS, CONTRACTORS, EMPLOYEES, LICENSEES AND INVITEES, (COLLECTIVELY THE “**USER PARTIES**”), (ii) ANY FALSE REPRESENTATION OR WARRANTY MADE BY USER HEREIN, AND (iii) ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE USER PARTIES IN CONNECTION WITH THIS USE AGREEMENT, THE CONSTRUCTION, DEVELOPMENT, OPERATION AND USE OF THE PREMISES AND USE OF AIRPORT IMPROVEMENTS. USER IS NOT EXCUSED OR RELIEVED OF ITS OBLIGATIONS UNDER THIS SECTION IF A CLAIM ARISES OUT OF, OR IS CAUSED BY, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE USER PARTIES CONCURRENT WITH THAT OF THE INDEMNIFIED PARTIES. USER SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. USER MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF THE INDEMNIFIED PARTIES OR USER, AS USER MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THE EXPENSES THEREOF SHALL BE PAID BY USER. IN NO EVENT MAY USER ADMIT LIABILITY ON THE PART OF CITY OR AIRPORT MANAGEMENT WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF CITY’S CITY ATTORNEY.
- b. Limitation of Liability. The foregoing and any other indemnity of User herein shall not be interpreted as requiring User to indemnify any of the Indemnified Parties from any liability arising solely out of willful misconduct, gross negligence, breach of this Use Agreement or breach of any strict liability obligations.
- c. Waiver of Consequential Damages. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING CLAIMS OF PERSONS AND ENTITIES CLAIMING BY OR THROUGH ANY OF THEM AND OTHER SIMILAR CLAIMS OR DAMAGES.
- d. Claims Against User. If any claim, demand, suit or other action is made or brought by any person or entity against User arising out of or concerning this Use Agreement, User shall give written notice thereof, to City and Airport Management within ten (10) days after receipt of such claim, demand, suit or action.

- e. Notice. User shall give immediate verbal notice, and prompt written notice to the City and Airport if it is involved in any accident on the Premises or Airport. To the extent User's officers are aware of any defects in Airport runways, taxiways, landing areas, lighting systems or other facilities which may require immediate attention, User shall promptly notify Airport Management of the same (City acknowledging that inspection and reporting is not User's obligation, and that such notice is provided as a courtesy to City).
- f. Security. City does not guarantee police protection or security to User or its property and, except as provided in subsection b above, (i) City and Airport Management shall not be responsible for injury to any person on the Premises or for harm to any property which belongs to User or those claiming by or through User, or which may be stolen, destroyed or damaged; and (ii) USER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND AIRPORT MANAGEMENT AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES HARMLESS FROM AND AGAINST ANY AND ALL SUCH CLAIMS.

#### **ARTICLE 12: CONDEMNATION**

- 12.01 Total: If the whole of the Premises is taken by eminent domain, then this Use Agreement shall terminate as of the date the title vests in the condemning authority.
- 12.02 Partial: If a portion of the Premises is taken by eminent domain, and the partial taking renders the Premises unsuitable for the business of User, then this Use Agreement shall terminate. If the partial taking is not extensive enough to render the Premises unsuitable for the business of User, then this Use Agreement shall continue in effect with respect to the remainder of the Premises.
- 12.03 Fee. If this Use Agreement is terminated as provided in this section, Fees shall be paid up to the date of the last balloon launch.
- 12.04 Definition of Taking. As used in this Article 12, "taken" or "taking" shall include a sale, transfer or conveyance in avoidance or in settlement of condemnation or a similar proceeding.

#### **ARTICLE 13: DAMAGE BY CASUALTY**

- 13.01 Notice Required. User shall give immediate verbal notice (within one [1] hour of knowledge), followed by prompt written notice, to City of any material damage caused to the Premises by fire or other casualty.
- 13.02 Restoration Upon Casualty Loss. If the Premises are totally destroyed by fire, tornado or other casualty not the fault (in whole or in part) of User or any person in or about the Premises with the express or implied consent of User, or if not totally destroyed, if the Premises should be so damaged by such a cause that rebuilding or repairs cannot reasonably be completed within one hundred eighty (180) working days after the date of City's receipt of insurance proceeds in connection with the casualty, this Use Agreement shall terminate

#### **ARTICLE 14: ASSIGNMENT AND SUBLETTING**

- 14.01 Assignment by User. User shall not assign all or part of its interest in this Use Agreement without the advance written consent of the City. Consent by the City to one (1) or more assignments shall not operate as a waiver of the City's rights as to any subsequent assignments.

- 14.02 No Release. Except for an assignment which City has consented pursuant to Section 14.01, no assignment, sublease or grant of use and occupancy rights shall relieve User of its obligations to City hereunder. Any assignment, transfer or sublease that is not permitted under this Use Agreement and has not been authorized by City in writing shall be void.
- 14.03 Assignment by City. In the event of an assignment by City of all of its interest in the Premises to a person or entity that assumes all of City's obligations pursuant to this Use Agreement, User agrees to look solely to such assignee.

**ARTICLE 15: EVENTS OF DEFAULT AND REMEDIES; TERMINATION**

- 15.01 Events of Default. The following events shall constitute "events of default" by User under this Use Agreement:
- a. Fee. User fails to pay when due any Fees or any other sums or charges due under this Use Agreement, and such failure continues for ten (10) days following written notice thereof (provided, however, that City shall be obligated to give only two such notices in any calendar year, and after such two notices, City will no longer be obligated to give any other notice under this section within such calendar year); or
  - b. Other Breaches. Failure by User to observe or perform any of the covenants, conditions or provisions of this Use Agreement or Airport Minimum Standards or Rules and Regulations may result in immediate termination of this Use Agreement.

**ARTICLE 16: MISCELLANEOUS**

- 16.01 Gender Neutral. When the singular number is used in this Use Agreement, it will include the plural when appropriate, and the neuter gender will include the feminine and masculine genders when appropriate.
- 16.02 Severability. If any clause or provision of this Use Agreement is illegal, invalid or unenforceable under present or future laws, this Use Agreement will remain in effect, and the remaining provisions will continue in force if they can be given effect without the invalid portion.
- 16.03 Amendment. This Use Agreement may be amended only by an instrument in writing signed by both parties. This Use Agreement shall apply to and be binding upon the parties and their permitted successors in interest and legal representatives.
- 16.04 Headings. The captions used in this Use Agreement are for convenience only and do not in any way limit or amplify the terms and provisions of this Use Agreement.
- 16.05 Nonwaiver of Rights. No waiver of default by either party of any terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.
- 16.06 Force Majeure. Whenever a period of time is prescribed for action to be taken by City or User, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes beyond the reasonable control of City or User (herein, "*force majeure*") shall be excluded from the computation of any such period of time.

- 16.07 Quiet Enjoyment. City represents and warrants that it has the lawful authority to enter into this Use Agreement and has title to the Premises. This Use Agreement is subject to the rights of the United States of America during periods of national emergency and its right to take all or a portion of the Airport for federal activities, as provided herein.
- 16.08 No Partnership. This Use Agreement shall not be construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is that of City and User.
- 16.09 No Brokers. User warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Use Agreement, and User agrees to indemnify and hold City and Airport Management harmless from and against any and all costs, expense or liability for commissions or other compensation charges payable to any broker or agent of User with respect to this Use Agreement.
- 16.10 Governing Law; Venue; Dispute Resolution. The parties agree that the laws of the State of Texas shall govern this Use Agreement and that exclusive venue for enforcement of this Use Agreement shall lie in Hays County, Texas.
- 16.11 Charitable Immunity or Exemption. If User is a charitable association, corporation, partnership, individual enterprise or entity and claims immunity to or an exemption from liability for any kind of property damage or personal damage, injury or death, User hereby expressly waives its rights to plead defensively any such immunity or exemption as against City and Airport Management.
- 16.12 Notices. Notices required of either party pursuant to the provisions of this Use Agreement shall be conclusively determined to have been delivered to the other party when (i) hand-delivered to the other party, or (ii) mailed in the United States Mail, postage prepaid, certified, with return receipt requested, to the address specified below:

If to City:

City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666

and

1807 Airport Drive, Suite 200  
San Marcos, Texas 78666

If to User:

Air Carriage Over Texas, LLC.  
ATTN:

A party hereto may change its address by giving notice thereof to the other party in conformity with this Section 18.12.

- 16.13 Entire Agreement. This Use Agreement and the exhibits hereto constitute the entire understanding and agreement by the parties hereto concerning the Premises, and any prior or contemporaneous agreement, oral or written, which purports to vary from the terms hereof shall be void.
- 16.14 Action through Airport Management. All parties agree that City may choose to exercise any of its non-delegable powers under this Use Agreement through its Airport Management. Unless City notifies User in writing of new Airport Management, Airport Management is Texas Aviation Partners, LLC, a Texas limited liability company, with an address of 1807 Airport Drive, Suite 200, San Marcos, Texas 78666.
- 16.15 Attorney Fees. Each party will be required to pay its own attorneys' fees incurred in connection with the negotiation of this Use Agreement or any action or proceeding arising between City and User regarding this Use Agreement. Further, except as expressly provided herein, each party waives any and all rights under law or in equity to seek or recover attorney's fees from the other party in any civil or administrative litigation or dispute resolution proceeding for breach of this Use Agreement or to enforce any provision of this Use Agreement.
- 16.16 Reservation of Immunities. TO THE EXTENT PROVIDED IN TEXAS LOCAL GOVERNMENT CODE CHAPTER 271 SUBCHAPTER I, AND OTHER APPLICABLE LAW, CITY WAIVES ITS RIGHTS TO ASSERT GOVERNMENTAL IMMUNITY FROM SUIT FOR BREACH OF THIS USE AGREEMENT BY CITY OR LIABILITY FOR CONTRACT CLAIMS ASSERTED BY USER SEEKING THE REMEDIES OF USER SET FORTH HEREIN, INCLUSIVE OF SECTION 15.04. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, CITY DOES NOT WAIVE, AND EXPRESSLY RESERVES, ALL IMMUNITIES EXISTING UNDER APPLICABLE LAW AVAILABLE TO CITY AS A TEXAS HOME-RULE MUNICIPAL CORPORATION. IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THE FOREGOING WAIVER IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CONTRACT CLAIMS UNDER THIS USE AGREEMENT.
- 16.17 No Third Party Beneficiaries. This Use Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder.
- 16.18 Survival. Any terms and provisions of this Use Agreement pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Use Agreement shall survive the same.
- 16.19 Exhibits. The exhibits to this Use Agreement are as follows:

Exhibit A      Location of Premises

**IN WITNESS WHEREOF**, the parties hereto have executed this Use Agreement effective as of the Effective Date.

**CITY:**

City of San Marcos, Texas

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

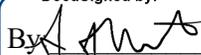
**ATTEST:**

\_\_\_\_\_

**USER:**

Air Carriage over Texas LLC

DocuSigned by:

By:  \_\_\_\_\_

Name Printed: ARTHUR MOLLER

Title: Owner/operator

**EXHIBIT A**  
Location of Premises



PREMISES DIMENSIONS  
APPROXIMATE



## Legislation Text

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**File #:** Res. 2020-229R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-229R, approving the compliance policy under Title VI of the Civil Rights Act of 1964 in connection with the City's requirements as Direct Recipient of Federal Transit Administration Funding, and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** General Services

**Amount & Source of Funding**

**Funds Required:** NA

**Account Number:** Click or tap here to enter text.

**Funds Available:** Click or tap here to enter text.

**Account Name:** Click or tap here to enter text.

**Fiscal Note:**

**Prior Council Action:**

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Multi Modal Transportation

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

Economic Development - Choose an item.

Environment & Resource Protection - Choose an item.

Land Use - Choose an item.

Neighborhoods & Housing - Choose an item.

Parks, Public Spaces & Facilities - Choose an item.

Transportation - Safe, Well coordinated transportation system implemented in an environmentally sensitive manner

Core Services

Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

- At Council's direction the City became a direct recipient of the Federal Transit Administration on October 1, 2019
- The City's Title VI policy has been updated to include specific requirements for a direct recipient of the Federal Transit Administration including approval of the City's Title VI policy by the governing body
- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of Race, Color or National Origin
- The City's Title VI policy will be reviewed every three years to ensure the policy is compliant with any changes in the law and that all data is accurate
- The City has adopted other anti-discrimination policies which support Title VI requirements relating to employment, procurement and equal access
- The City adheres to other laws which prohibit discrimination

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends approval.

**RESOLUTION NO. 2020- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING THE COMPLIANCE POLICY UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 IN CONNECTION WITH THE CITY'S REQUIREMENTS AS A DIRECT RECIPIENT OF FEDERAL TRANSIT ADMINISTRATION FUNDING; AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The attached City of San Marcos Title VI Compliance Policy is approved.

**PART 2.** The City Manager, or his designee, may amend this policy as necessary to comply with then applicable laws and regulations.

**PART 3.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on October 20, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk



## **City of San Marcos Title VI Compliance Policy**

### **Introduction**

The City of San Marcos, as a recipient of Federal Financial Assistance and under Title VI of the Civil Rights Act of 1964 and related statutes, affirms no person shall on the grounds of race, color, or national origin (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 200d-3) be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the City regardless of whether these projects and activities are federally funded or not.

Also, Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP), provides that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal Financial Assistance. As a recipient of Federal Financial Assistance in its transportation and other improvement projects, the City of San Marcos must provide access to individuals with limited ability to speak, write, or understand the English language.

The City of San Marcos must not restrict an individual in any way from the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under its programs or projects. Individuals may not be subjected to criteria or methods of administration which cause adverse impact because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program because of race, color or national origin. Therefore, the primary goals and objectives of City of San Marcos's Title VI Non-Discrimination Plan are:

1. To assign responsibilities and procedures for ensuring compliance with Title VI of the Civil Rights Act of 1964 and pertinent directives;
2. To ensure that people affected by the City's programs and projects receive the services, benefits, and opportunities to which they are entitled without regard to race, color, or national origin;
3. To prevent discrimination in City programs and activities, whether those programs and activities are federally funded or not;
4. To establish procedures for identifying impacts in any program, service, or activity that may create an illegal adverse impact on any person because of race, color, or national origin and all affected Title VI populations;
5. To establish procedures to annually review Title VI compliance of specific program areas within the City of San Marcos;
6. To set forth procedures for filing and processing complaints by persons who believe they have been subjected to illegal discrimination under Title VI in a City-provided service, project, program or activity.



## Title VI Policy Statement City of San Marcos

It is the policy of the City of San Marcos, Texas, to provide reasonable assurances that it will comply with the requirements and provisions of the Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d-42 U.S.C 2000d-4, and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person who resides in, or does business with, the City of San Marcos on the grounds of race, color, or national origin, be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any of our programs or activities.

A handwritten signature in blue ink, appearing to read "Bert Lumbreras", written over a horizontal line.

Bert Lumbreras, City Manager  
City of San Marcos

A handwritten date "10/05/2020" in blue ink, written over a horizontal line.

Date



## Declaración de política del Título VI

### Ciudad de san marcos

Es política de la Ciudad de San Marcos, Texas, brindar garantías razonables de que cumplirá con los requisitos y disposiciones del Título VI de la Ley de Derechos Civiles de 1964, 78 Stat. 252, 42 USC 2000d-42 USC 2000d-4, y todos los requisitos impuestos por o de conformidad con el Título 49, Código de Regulaciones Federales, Departamento de Transporte, Subtítulo A, Oficina del Secretario, Parte 21, No discriminación en programas de asistencia federal el Departamento de Transporte - Vigencia del Título VI de la Ley de Derechos Civiles de 1964 y otras directivas pertinentes, con el fin de que, de acuerdo con la Ley, los Reglamentos y otras directivas pertinentes, ninguna persona que resida o haga negocios con el La ciudad de San Marcos por motivos de raza, color u origen nacional, será excluida de la participación, se le negarán los beneficios o será objeto de discriminación en cualquiera de nuestros programas o actividades. .

Bert Lumbreras, City Manager  
City of San Marcos

Date



## ORGANIZATIONAL RESPONSIBILITIES

The Title VI Program Coordinator is responsible for leading a team formed for City-wide compliance with the Title VI program, plan and assurance for the City of San Marcos.

**Complaints:** If any individual believes that he/she or any other program beneficiaries have been the object of unequal treatment or discrimination as to the receipt of benefits and/or service, or on the grounds of race, color, or national origin (including Limited English Proficiency), he/she may exercise his/her right to file a complaint with the City's Title VI Coordinator. Every effort will be made to resolve complaints informally and at the lowest level first. If related to transit, complaint can be filed with the Texas Department of Transportation Public Transportation Division, and the Federal Transit Administration.

**Data Collection:** Statistical data on race, color, national origin, English language proficiency of participants in and beneficiaries of City programs, e.g. impacted citizens and affected communities, will be gathered and maintained by the City. The gathering procedures will be reviewed annually to ensure sufficiency of the data in meeting the requirements of the Title VI program.

**Program Reviews:** Special emphasis program reviews will be conducted based on the annual summary of Title VI activities, accomplishments and issues. The reviews will be conducted by the Title VI Program Coordinator to assure effectiveness in their compliance with Title VI provisions. The Title VI Program Coordinator will coordinate efforts to ensure equal participation in all programs and activities at all levels. The City will conduct reviews annually by the end of the fiscal year.

**Title VI Reviews on Sub-Recipients for Transit (if applicable):** Title VI compliance reviews of Transit Sub-recipients will be conducted annually (due each January 15<sup>th</sup>) and coordinated by the Transit Manager. The status of each review will be reported in the annual report.

**Annual Reporting:** The Title VI Program Coordinator will be responsible for coordination and submission of the Annual Compliance Plan and Accomplishment Report to the Texas Department of Transportation, Office of Civil Rights via TxDOT's Title VI/ Nondiscrimination Annual Work Plan & Accomplishments Report Development Guide, as presented in TxDOT's Title VI/ Nondiscrimination Technical Assistance Guide for Sub-Recipients.

**Title VI Plan Updates:** The City will review the need for any updates to its Title VI Assurances every three years or as necessary.

**Remedial Action:** The City will actively pursue the prevention of Title VI deficiencies and violations and will take the necessary steps to ensure compliance with all program administrative requirements. When deficiencies are found, procedures will be promptly implemented to correct the deficiencies and to put in writing the corrective action(s).

**Non-Discrimination Requirements:** The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the service, facility, and performance of any contract on the basis of race, color, or national origin. In administering its Title VI Program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the Title VI Program.

**Non-Discrimination Training:** Training is provided every two years to employees at the City of San Marcos and on as needed basis regarding harassment and non-discrimination. The City provides



information to the public detailing its Title VI obligations and notifies members of the public of the protections afforded to them by Title VI and other nondiscrimination requirements. A Notice of the Public's Rights under Title VI is found on the City's website: [www.sanmarcostx.gov](http://www.sanmarcostx.gov).

**City Ordinance:** Section 46 of Code of Ordinances prohibits discrimination

**Membership of Non-elected Committees and Councils:** The City does not have a non-elected transit committee.

**Finance:** The Purchasing Manager will ensure the required clauses are included in the bid and proposal documents for each project that is funded, in part, by U.S. Department of Transportation and the Federal Highway Administration. The Purchasing Manager will review the documentation before being released to the public. Upon receipt of bids and proposals the Purchasing Manager will review them for inclusion of required disclosures. After contractor or consultant selection is made, the Purchasing Manager, will review the contract documents to ensure inclusion of the required clauses.

**Transit-related, non-elected, Committees or Councils**

The City does not have any transit-related, non-elected, planning boards, advisory councils or committees.



## **City's Public Participation Policies and Procedures**

The Public Information Office for the City of San Marcos works in coordination with the City Clerk, Public Works, Transit, Engineering and other City departments to publish notice of public meetings throughout the City of San Marcos. The City typically holds an initial public meeting to discuss proposed Capital Improvement Projects and a second meeting when the Project is ready to be awarded to a Contractor.

The City's Public Meeting Procedures are attached to this Plan. The City also uses a door hanger process to notify property owners adjacent to road construction projects to notify them of the upcoming public works project two-weeks out and again 2-days prior to the start of construction. Door hangers are printed in both English and Spanish for LEP portions of the City's population. City public meetings are posted on the City's website.

The City Council and City Planning & Zoning Commission also hold frequent public hearings on zoning and land use matters, Transportation Plans, Capital Improvement Projects and other programs of interest to the citizens of San Marcos. The City publishes notice of these Public Hearings in and the City posts notice of public hearings on the City's website which is accessible to the public.

The City publishes city ordinances calling for City Elections in both English and Spanish. The City also publishes any notices or public hearings related to city elections in both English and Spanish so that citizens who are LEP know when public hearings are scheduled, and which candidates are up for consideration or election.

## **Standard Non-Discrimination Clauses for TxDOT Projects**

The City of San Marcos includes all standard U.S. DOT Title VI assurance clauses in project bid documents and contracts which are funded by TxDOT or U.S. Department of Transportation dollars.

## **Monitoring and Enforcement Mechanism**

The City will employ the following monitoring and enforcement mechanisms to ensure compliance with Title VI Program requirements:

1. The City reserves the right to inspect all records of the contractor and subcontractor concerning any USDOT-assisted contracts in addition to an annual questionnaire to be completed and returned to the department by January 31<sup>st</sup>.
2. The City will bring to the attention of the USDOT Office of the Inspector General any false, fraudulent, or dishonest conduct in connection with the Title VI Program.
3. If a firm uses, or attempts to use, false, fraudulent, or deceitful statements or representations in order to meet the Title VI requirement of the contract, the City reserves the right, under the provisions of Title VI Assurances, to report such actions to the USDOT or its designee. The USDOT or its designee may, at its discretion, initiate suspension or debarment proceedings against the firm. The City may also pursue all means available to address such unprofessional and unethical behavior.
4. For all TXDOT funded projects an annual baseline questionnaire will be sent to all contractors.

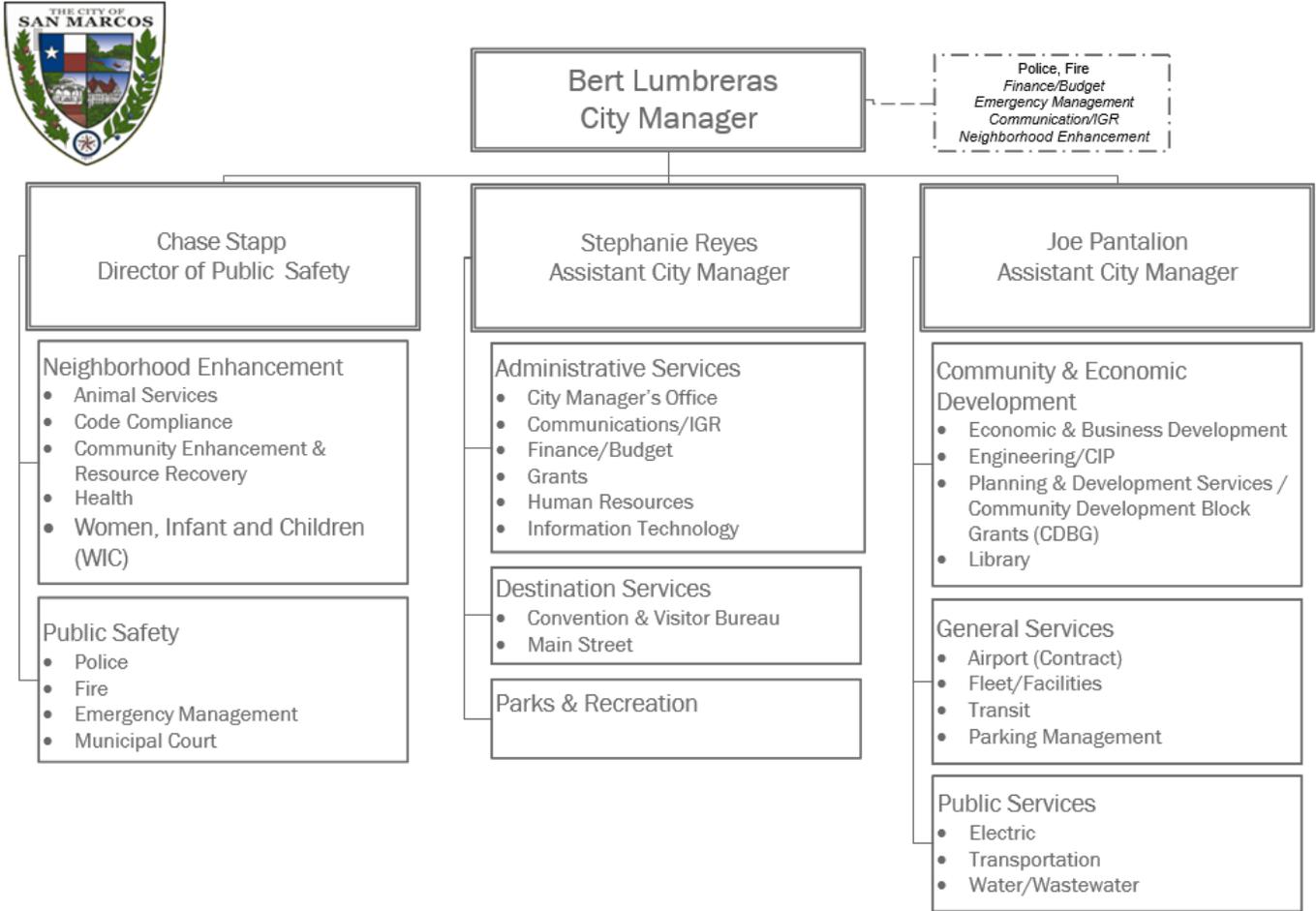


5. The City will consider similar action under our own legal authorities, including responsibility determinations in future contracts. A listing of regulations, provisions, and contract remedies available to us in the events of non-compliance with the Title VI Assurances by a participant in our procurement activities follows:

Attempts to Evade Title VI Requirements – Any individual(s) or firm found to have knowingly engaged or participated in any direct or indirect attempt to evade the Title VI requirements may be declared ineligible for future contracts with the City that contain federal assistance. The individual(s) or firm may be held liable to the City for any forfeiture of funds or damages caused by delay in the award or performance of the contract resulting from the firm’s non-compliance.



## Organizational Chart





## **Title IV COMPLAINT AND APPEAL PROCEDURES**

This Complaint Procedure is established to meet the requirements of the Title VI of the Civil Rights Act of 1964. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of race, color or national origin in the provision of services, activities, programs, or benefits by the City of San Marcos.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem including whether it is related to race, color, or national origin. Alternative means of filing complaints will be made available for persons with disabilities upon request.

The compliant form is found on website at [www.sanmarcostx.gov](http://www.sanmarcostx.gov) .

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 180 calendar days after the alleged violation to:

Title VI Program Coordinator  
City of San Marcos  
630 E Hopkins  
San Marcos, TX 78666  
512-393-8000  
Email: [TitleVICompliance@sanmarcostx.gov](mailto:TitleVICompliance@sanmarcostx.gov)

Within 15 calendar days after receipt of the complaint, the Title VI Program Coordinator or his/her designee will meet with the complainant to discuss the complaint and the possible resolutions. Within 30 calendar days of the meeting, the Title VI Program Coordinator or his/her designee will respond in writing, and where appropriate, in a format accessible to the complainant. The response will explain the position of the City of San Marcos and offer options for substantive resolution of the complaint.

If the complaint is related to transportation, then the City shall forward the complaint to TxDOT within 10 working days upon receipt of complaint to the TxDOT Public Transportation Coordinator (PTC) by email or fax. If the response by the Title VI Program Coordinator or his/her designee does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the City Manager of his/her designee.

Within 15 calendar days after receipt of the appeal, the City Manager or his/her designee will meet with the complainant to discuss the complaint and possible resolutions.

Within 15 calendar days after the meeting, the City Manager or his/her designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by the Title VI Program Coordinator or his/her designee, appeals to the City Manager or his/her designee, and responses from these two offices will be retained by the City of San Marcos for at least three years.



If the City of San Marcos has discriminated against you, please fill out attached form and mail or e-mail to the Title VI Program Coordinator listed above. The information for filing a complaint can also be found on the City's website, [www.sanmarcostx.gov](http://www.sanmarcostx.gov).

**Information in another Language**

To request information in another language contact (512) 393-8000, [TitleVICompliance@SanMarcostx.gov](mailto:TitleVICompliance@SanMarcostx.gov) , or Title VI Coordinator, 630 E Hopkins, San Marcos, TX 78666



**City of San Marcos, TX  
Title VI Complaint Form**

|   |             |                          |    |
|---|-------------|--------------------------|----|
| <b>Section 1</b>  |             |                          |    |
| Name:   |             |                          |    |
| Address:  |             |                          |    |
| Telephone:  |             | Telephone (Alternative): |    |
| Electronic Mail Address:  |             |                          |    |
| Accessible Format Requirements?   | Large Print | Audio Tape               |    |
|   | Other       |                          |    |
| <b>Section 2</b>  |             |                          |    |
| Are you filing this complaint on your own behalf?   |             | Yes*                     | No |
| *If you answered "yes" to this question, go to Section III.   |             |                          |    |
| If not, please supply the name and relationship of the person for whom you are complaining:   |             |                          |    |
| Please explain why you have filed for a third party:  |             |                          |    |
| Please confirm that you have obtained the permission of the aggrieved party if you are filing on behalf of a third party.   |             | Yes                      | No |
| <b>Section 3</b>  |             |                          |    |
| I believe the discrimination I experienced was based on:  |             |                          |    |
| Date of Alleged Discrimination (Month, Day, Year): _____  |             |                          |    |
| Explain as clearly as possible what happened and why you believe you were discriminated against. Describe all persons who were involved. Include the name and contact information of the person(s) who discriminated against you (if known) as well as names and contact information of any witnesses. If more space is needed, please use the back of this form. |             |                          |    |
| <b>Section 4</b>  |             |                          |    |
| Have you previously filed a Title VI complaint with this agency?  | Yes         | No                       |    |



**Section 5**

Have you filed this complaint with any other Federal, State, or local agency, or with any Federal or State court?  Yes  No If yes, check all that apply:  Federal Agency:  Federal Court  State Agency  State Court  Local Agency

Please provide information about a contact person at the agency/court where the complaint was filed.

Name:

Title:

Agency:

Address:

Telephone:

You may attach any written materials or other information that you think is relevant to your complaint.

Signature and date required below

\_\_\_\_\_ Signature

\_\_\_\_\_ Date

Please submit this form in person at the address below, or mail this form to:

Title VI Program Coordinator  
City of San Marcos  
630 E Hopkins  
San Marcos, TX 78666  
512-393-8000  
Email: [TitleVICoordinator@sanmarcostx.gov](mailto:TitleVICoordinator@sanmarcostx.gov)



## Título IV PROCEDIMIENTOS DE RECLAMACIÓN Y APELACIÓN

Este Procedimiento de Quejas está establecido para cumplir con los requisitos del Título VI de la Ley de Derechos Civiles de 1964. Puede ser utilizado por cualquier persona que desee presentar una queja alegando discriminación por motivos de raza, color u origen nacional en la prestación de servicios, actividades, programas o beneficios de la Ciudad de San Marcos.

La queja debe hacerse por escrito y contener información sobre la presunta discriminación, como el nombre, la dirección, el número de teléfono del demandante y la ubicación, la fecha y la descripción del problema, incluso si está relacionado con la raza, el color, o la nacionalidad. origen. Los medios alternativos para presentar quejas se pondrán a disposición de las personas con discapacidades que lo soliciten.

El formulario de cumplimiento se encuentra en el sitio web en [www.sanmarcostx.gov](http://www.sanmarcostx.gov).

La queja debe ser presentada por el agraviado y / o su representante lo antes posible, pero a más tardar 180 días calendario después de la presunta violación para:

Title VI Program Coordinator  
City of San Marcos  
630 E Hopkins  
San Marcos, TX 78666  
512-393-8000

Email: [TitleVICompliance@sanmarcostx.gov](mailto:TitleVICompliance@sanmarcostx.gov)

Dentro de los 15 días calendario posteriores a la recepción de la queja, el Coordinador del Programa del Título VI o su designado se reunirán con el demandante para discutir la queja y las posibles soluciones. Dentro de los 30 días calendario posteriores a la reunión, el Coordinador del Programa del Título VI o su representante responderán por escrito y, cuando corresponda, en un formato accesible para el demandante. La respuesta explicará la posición de la Ciudad de San Marcos y ofrecerá opciones para la resolución sustantiva de la queja.

Si la queja está relacionada con el transporte, la Ciudad enviará la queja a TxDOT dentro de los 10 días hábiles siguientes a la recepción de la queja al Coordinador de Transporte Público (PTC) de TxDOT por correo electrónico o fax. Si la respuesta del Coordinador del Programa del Título VI o su representante no resuelve satisfactoriamente el problema, el demandante y / o su representante pueden apelar la decisión dentro de los 15 días calendario posteriores a la recepción de la respuesta al Gerente de la ciudad. su designado

Dentro de los 15 días calendario posteriores a la recepción de la apelación, el administrador de la ciudad o su representante se reunirán con el demandante para analizar la queja y las posibles resoluciones.

Dentro de los 15 días calendario posteriores a la reunión, el administrador de la ciudad o su designado responderán por escrito y, cuando corresponda, en un formato accesible para el demandante, con una resolución final de la queja.

Todas las quejas por escrito recibidas por el Coordinador del Programa del Título VI o su designado, las apelaciones al Administrador de la Ciudad o su designado, y las respuestas de estas dos oficinas serán retenidas por la Ciudad de San Marcos por al menos tres años.



Si la Ciudad de San Marcos lo ha discriminado, complete el formulario adjunto y envíelo por correo electrónico o correo electrónico al Coordinador del Programa del Título VI que figura más arriba. La información para presentar una queja también se puede encontrar en el sitio web de la Ciudad, [www.sanmarcostx.gov](http://www.sanmarcostx.gov).

### **Información en otro idioma**

Solicitar información en otro idioma 512-393-8000. [TitleVICompliance@SanMarcostx.gov](mailto:TitleVICompliance@SanMarcostx.gov) , or Title VI Coordinator, 630 E Hopkins, San Marcos, TX 78666



**City of San Marcos, TX**  
**Título VI Formulario de Queja**

|  |          |                           |    |
|--|----------|---------------------------|----|
| <b>Section 1</b>   |          |                           |    |
| Nombre::   |          |                           |    |
| Dirección:   |          |                           |    |
| Teléfono:  |          | Teléfono (Alternativa)    |    |
| Dirección de correo electrónico:   |          |                           |    |
| Requisitos de formato accesible?   | Cinta de | audio de impresión grande |    |
|  | Otro     |                           |    |
| <b>Section 2</b>   |          |                           |    |
| ¿Está presentando esta queja en su propio nombre?  |          | Sí*                       | No |
| * Si respondió "sí" a esta pregunta, vaya a la Sección III.  |          |                           |    |
| Si no es así, proporcione el nombre y la relación de la persona por la que se queja:   |          |                           |    |
| Explique por qué ha solicitado un tercero:   |          |                           |    |
| Confirme que ha obtenido el permiso de la parte perjudicada si está presentando una demanda en nombre de un tercero.   |          | Sí                        | No |
| <b>Section 3</b>   |          |                           |    |
| Creo que la discriminación que sucedió se basó en:   |          |                           |    |
| Fecha de presunta discriminación (mes, día, año): _____  |          |                           |    |
| Explique con la mayor claridad posible qué sucedió y por qué cree que fue discriminado. Describe a todas las personas que estuvieron involucradas. Incluya el nombre y la información de contacto de la persona (s) que lo discriminó (si lo conoce), así como los nombres y la información de contacto de los testigos. Si necesita más espacio, utilice la parte de atrás de este formulario.  |          |                           |    |
| <b>Section 4</b>   |          |                           |    |
| ¿Ha presentado anteriormente una queja del Título VI con esta agencia?   | Sí       | No                        |    |
| <b>Section 5</b>   |          |                           |    |
| ¿Ha presentado esta queja ante cualquier otra agencia federal, estatal o local, o ante cualquier tribunal federal o estatal? <input type="checkbox"/> Sí <input type="checkbox"/> No En caso afirmativo, marque todo lo que corresponda: <input type="checkbox"/> Agencia federal: <input type="checkbox"/> Tribunal federal <input type="checkbox"/> Organismo estatal <input type="checkbox"/> Tribunal estatal <input type="checkbox"/> Agencia local |          |                           |    |



|  |
|--|
| Proporcione información sobre una persona de contacto en la agencia / tribunal donde se presentó la queja. |
| Nombre:  |
| Título:  |
| Agencia:   |
| Dirección:   |
| Teléfono:  |

Puede adjuntar cualquier material escrito u otra información que considere relevante para su reclamo.

Firma y fecha requeridas a continuación

\_\_\_\_\_ Firma  
\_\_\_\_\_ Fecha

Envíe este formulario en persona a la dirección que se encuentra debajo, o envíe este formulario por correo a:

Title VI Program Coordinator  
City of San Marcos  
630 E Hopkins  
San Marcos, TX 78666  
512-393-8000  
Email: [TitleVICoordinator@sanmarcostx.gov](mailto:TitleVICoordinator@sanmarcostx.gov)



## Limited English Proficiency Plan

### Introduction

As a recipient of federal funds from the Department of Transportation the City is subject to legal requirements to provide language assistance to those that have Limited English Proficiency (LEP). Most individuals living in the United States read, write, speak, and understand English; however, there are many individuals for whom English is not their primary language. Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be LEP. Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. Recipients of federal financial assistance, such as the City, have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.

### **Title VI of the Civil Rights Act of 1964 (Title VI)**

Title VI and its implementing regulations provides that no person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination on the grounds of race, color, or national origin, under any program or activity that receives federal financial assistance. Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes discrimination on the basis of national origin. Title VI and its implementing regulations require the City take responsible steps to ensure meaningful access to the benefits, services, information and activities for individuals who have LEP. In certain circumstances, failure to ensure LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title VI regulations against national origin discrimination.

### **Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (EO 13166)**

EO 13166 was signed by President Clinton on August 16, 2000 and directs each Federal agency to examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services. Federal agencies were instructed to publish guidance for their respective recipients in order to assist them with their obligations to LEP persons under Title VI. The EO states recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

### **Department of Transportation (DOT) Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient Persons (DOT LEP Guidance)**

In 2005, the DOT published updated guidance for its recipients. This document provides suggestions to best comply with the statutory and regulatory obligations to provide meaningful access to the benefits, services and information, and other important portions of their programs and activities for individuals who are LEP. A defining component of this guidance is a recommendation to use a four-factor analysis framework to conduct a LEP needs assessment.

The City’s Limited English Proficiency (LEP) Plan is established based on guidance “On an effective Language Implementation Plan” expressed in Sections V and VII of the U.S. Department of Transportation’s Policy Guidance Concerning Recipients’ Responsibilities to Limited English



Proficient (LEP) Persons [U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates].

Using the LEP guidance in 70 FR 74097 and the FTA handbook on implementing an LEP plan, the following tasks were used to address the needs of the LEP population served:

1. Identifying LEP individuals who need language assistance
2. Providing language assistance measures
3. Staff Training
4. Providing notice to LEP persons of the availability of language assistance
5. Monitoring and updating the LEP plan

The LEP regulation mandates that all federal agencies and recipients of federal funding identify any need for service to those persons and households for whom English proficiency is limited. In San Marcos, Spanish is the most common foreign language spoken. The City of San Marcos and its sub-recipients routinely publish printed materials in English and Spanish (with other language translations available upon request).

### **Information in another Language**

To request information in another language contact (512) 393-8000, [TitleVICompliance@SanMarcostx.gov](mailto:TitleVICompliance@SanMarcostx.gov), or Title VI Coordinator, 630 E Hopkins, San Marcos, TX 78666

### **Identification of LEP Individuals Who Need Language Assistance**

This section of the LEP Implementation Plan overlaps to a great extent with Factor One and Factor Two in the four-factor analysis.

According to the Census Bureau, approximately 57,193 people, age five and older, lived within the city limits of San Marcos, Texas in 2017; of which most (93.5 percent) speak English and a small percentage spoke English less well (6.5 percent). The largest LEP populations in San Marcos are Spanish speakers followed by Other Indo-European, and Asian and Pacific speakers. These LEP speakers account for 1883 or 3.9 percent of all LEP speakers who only speak English less than “very well” 18 years or older. Of the LEP speakers 1752 speak Spanish and 131 other languages. **According to the Safe Harbor Provision Spanish would be the only language needed to be translated for vital documents. Others upon request can be translated orally.**

### **Existing Language Assistance Measures**

City staff has the following options available to them to help assist someone who is having trouble communicating due to a language barrier:

- Language Line Services – City staff are able to access interpretation services for more than 170 languages. This service facilitates a clear, three-way conversation between the citizen, the staff member and an interpreter. The cost for Language Line Services interpretation services is \$0.50/minute for Spanish and \$0.71/minute for all other languages by phone; and \$49/ hour for Spanish and \$65/hour for all other languages in person.
- Bilingual City Staff – Spanish speaking City staff are available to communicate with the public over the phone, through email, and in person.
- “I Speak” Language Flashcards are available for display. There are 38 languages represented on



this flashcard. These are available for free download on [www.LEP.gov](http://www.LEP.gov).

### **Staff Training**

This section describes the training that is conducted to ensure that appropriate staff members know about LEP policies and procedures and are ready to provide assistance.

Training on LEP policies and procedures are included as part of the orientation process for new employees. Existing employees will periodically take part in re-training or new training sessions to keep up to date on their responsibilities to LEP persons. Supervisors and managers, even if they do not interact regularly with LEP persons, will be fully aware of and understand this LEP Plan so they can reinforce its importance and ensure its implementation to staff. Information is available for all employees on the City's intranet.

### **Provide notice to LEP persons of the availability of language assistance**

The notification of the availability of interpretive services, upon request and free of charge, are placed on public meeting announcements and/or other outreach materials and can be sent to community organizations, local television stations and newspapers, including Spanish papers and television stations.

To request information in another language contact (512) 393-8000, [TitleVICompliance@SanMarcostx.gov](mailto:TitleVICompliance@SanMarcostx.gov), or Title VI Coordinator, 630 E Hopkins, San Marcos, TX 78666.

### **Vital Documents to be translated into Spanish**

- ADA complementary paratransit eligibility application
- News Letters or Brochures
- Title VI complaint form
- Complaint and Appeal Procedures
- Title VI-Notification of Protections to Public and Instructions on How to File a Complaint

### **Monitor and Update Plan**

The City should conduct internal monitoring to determine whether language assistance measures and staff training programs are working as planned. To accomplish this, the Title VI Coordinator would evaluate data collected by staff who have come into contact with LEP persons.

The Title VI Coordinator will update the LEP Plan as required as information is released from the U. S. Census Bureau.

Based on the feedback received from the internal monitoring and feedback from community organizations, the City would likely need to make incremental changes to the type of written and oral language assistance measures provided as well as staff training and community outreach programs. The cost and effectiveness of language assistance measures should be considered during this process.



## Department of Transportation (DOT) Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient Persons (DOT LEP Guidance)

In 2005, the DOT published updated guidance for its recipients. This document provides suggestions to best comply with the statutory and regulatory obligations to provide meaningful access to the benefits, services and information, and other important portions of their programs and activities for individuals who are LEP. A defining component of this guidance is a recommendation to use a four-factor analysis framework to conduct a LEP needs assessment.

### Four Factor Analysis:

- 1) Number and proportion of LEP persons in eligible service population.
- 2) Frequency with LEP individuals come in contact with the program.
- 3) Importance of the service provided by the program.
- 4) Resources available to the agency.

### Four Factor Analysis

#### Factor 1: Number and Proportion of LEP Persons Served and/or Encountered in the City of San Marcos

Factor 1 assesses the number and proportion of persons that are LEP and likely to be encountered within San Marcos. In accordance with policy guidance, the initial step for providing meaningful access to services for LEP persons and maintaining an effective LEP program is to identify LEP populations and describe their language characteristics. This process began by collecting and analyzing data provided by the U.S. Census Bureau and other local data sources.

The U.S. Census Bureau collects information about non-English speakers and defines those that are LEP as those that speak a language other than English and can only speak English "less than very well." To characterize the LEP population from the Census data, the number of individuals, age five and older, that are LEP. Table 2 presents the data that describes the number of individuals that are LEP.

As shown in Table 2, approximately 57,193 people, age five and older, lived within the city limits of San Marcos, Texas in 2017; of which most (93.5 percent) speak English and a small percentage spoke English less well (6.5 percent). The largest LEP populations in San Marcos are **Spanish** speakers followed by Other Indo-European, and Asian and Pacific speakers. These LEP speakers account for 1883 or 3.9 percent of all LEP speakers who only speak English less than "very well" 18 years or older. Of the LEP speakers 1752 speak Spanish and 131 other languages. **According to the Safe Harbor Provision Spanish would be the only language needed to be translated for vital documents. Others upon request can be translated orally.** See (Table 2.) Also, see 2010-2016 Census Maps, showing low income areas in the city, included herein (Table 1)

#### Factor 2: Frequency with which LEP Persons come into contact with the City Transit employees

The frequency with which City Transit employees have, or could have, contact with



LEP persons was reviewed. To date, City Transit employees have had (0) requests for interpreters and (0) requests for translated program documents.

### **Factor 3: Importance of the service provided by the Transit program.**

There is not a large geographic concentration of any type of LEP individuals in the service area for San Marcos. The majority (93.5 percent) of the population speaks English. City projects typically affect the citizens who live in close proximity to the project, more than those that do not. However, it can be interpreted that all projects conducted by the City are important to the citizens of San Marcos. Therefore, any project that is occurring in the City may be important to LEP persons.

### **Factor 4: Resources available to the City of San Marcos**

This step will allow the City to weigh the demand for language assistance against the current and projected financial and personnel resources. This analysis will help determine if the current language assistance measures are cost effective and help plan for future investments that will provide the most needed assistance to the greatest number of LEP persons within the resources available to the City.

Following this guidance, the City has described the language assistance services currently available and additional measures that would help in providing assistance to LEP persons.

### **Inventory of Language Assistance Measures Currently Being Provided**

City staff have the following options available to them to help assist someone who is having trouble communicating due to a language barrier:

- Language Line Services – City staff are able to access interpretation services for more than 170 languages. This service facilitates a clear, three-way conversation between the citizen, the staff member and an interpreter. The cost for Language Line Services interpretation services is \$0.50/minute for Spanish and \$0.71/minute for all other languages by phone; and \$49/ hour for Spanish and \$65/hour for all other languages in person.
- Bilingual City Staff – Spanish speaking City staff is available to communicate with the public over the phone, through email, and in person.
- “I Speak” Language Flashcards are available for display. There are 38 languages represented on this flashcard. These are available for free download on [www.LEP.gov](http://www.LEP.gov).

### **Conclusion**

This four-factor analysis will help develop new language assistance services and/or suggest modifications to the existing language assistance measures currently being provided. The information gathered from the Census Bureau, feedback from surveys of community organizations, citizens (including LEP persons) will define the steps that will be implemented in the LEP Plan.



## **Title VI - Notification of Protections to the Public and Instructions on How to File a Complaint**

### **Notice to the Public:**

The City of San Marcos is committed to ensuring that no person is excluded from participation in, or denied the benefits of, its services on the basis of race, color, or national origin, as protected by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all city programs, services and activities.

### **Instructions on Filing Title VI Complaints**

Any person who believes she or he has been aggrieved by any unlawful discriminatory practice under Title VI may file a complaint with the City of San Marcos Human Resource Department. All complaints received by the Human Resource Department are documented and are investigated in accordance with federal standards (28 CFR, Part 35 and FTA Circular 4702.1B). After the complaint is processed, a response (if requested) is sent to the customer filing the complaint and appropriate corrective action is taken.

For more information on the City of San Marcos's civil rights program and the procedures to file a complaint, or to get information in another language, customers are encouraged to contact the Human Resource Department at the number or address below. In addition, customers can obtain information by contacting the following points of services:

512-393-8000  
Texas Relay 711

Mailing Address:  
City of San Marcos Human Department Attn: Title  
VI Coordinator  
630 E Hopkins  
San Marcos, Texas 78666

Email: [TitleVICoordinator@Sanmarcostx.gov](mailto:TitleVICoordinator@Sanmarcostx.gov)

A complaint may also be filed directly with the:  
**Texas Department of Transportation**, Attn: TxDOT-PTN, 125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483, or  
**Federal Transit Administration**, Office of Civil Rights, Attention: Complaint Team East Building; 5<sup>th</sup> Floor-TCR; 1200 New Jersey Avenue, SE; Washington, DC 20590

### **Information in another Language**

To request information in another language contact (512) 393-8000, [TitleVICompliance@SanMarcostx.gov](mailto:TitleVICompliance@SanMarcostx.gov), or Title VI Coordinator, 630 E Hopkins, San Marcos, TX 78666



## **Título VI - Notificación de protecciones al público e instrucciones sobre cómo presentar una queja** **Instrucciones de presentación de quejas**

### **Aviso al público:**

La Ciudad de San Marcos se compromete a garantizar que ninguna persona sea excluida de la participación o se le nieguen los beneficios de sus servicios por motivos de raza, color u origen nacional, según lo protegido por el Título VI de la Ley de Derechos Civiles de 1964. , la Ley de Restauración de Derechos Civiles de 1987, y estatutos y reglamentos relacionados en todos los programas, servicios y actividades de la ciudad.

### **Instrucciones para presentar reclamos del Título VI**

Cualquier persona que crea que ha sido perjudicada por alguna práctica discriminatoria ilegal bajo el Título VI puede presentar una queja ante el Departamento de Recursos Humanos de la Ciudad de San Marcos. Todas las quejas recibidas por el Departamento de Recursos Humanos están documentadas y se investigan de acuerdo con las normas federales (28 CFR, Parte 35 y FTA Circular 4702.1B). Después de procesar la queja, se envía una respuesta (si se solicita) al cliente que presenta la queja y se toman las medidas correctivas apropiadas.

Para obtener más información sobre el programa de derechos civiles de la Ciudad de San Marcos y los procedimientos para presentar una queja, o para obtener información en otro idioma, se recomienda a los clientes que se comuniquen con el Departamento de Recursos Humanos al número o la dirección a continuación. Además, los clientes pueden obtener información contactando los siguientes puntos de servicios:

512-393-8000  
Texas Relay 711

Dirección:  
City of San Marcos Human Department  
Attn: Title VI Coordinator  
630 E Hopkins  
San Marcos, Texas 78666

Email: [TitleVICoordinator@Sanmarcostx.gov](mailto:TitleVICoordinator@Sanmarcostx.gov)

Una queja también puede ser presentada directamente con el: Texas Department of Transportation, Attn: TxDOT-PTN, 125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483, o

**Federal Transit Administration**, Office of Civil Rights, Attention: Complaint Team East Building;  
5<sup>th</sup> Floor-TCR; 1200 New Jersey Avenue, SE; Washington, DC 20590

### **Información en otro idioma**

Solicitar información en otro idioma. (512) 393-8000,  
[TitleVICompliance@SanMarcostx.gov](mailto:TitleVICompliance@SanMarcostx.gov) , or Title VI Coordinator, 630 E Hopkins, San Marcos, TX 78666



(Found on City's Website)

### **Filing a Discrimination Complaint with the City**

Any person who believes they have been discriminated against, on the grounds of race, color, or national origin (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 200d-3) can file a complaint with the City. A complaint may also be filed by a representative on behalf of such a person.

1. Complaints shall be submitted in writing on the City's Civil Rights Complaint form (links below) and must be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination.

[Title VI Compliant Form-English](#)

[Title VI Complaint Form – Spanish](#)

2. Mail the completed form to City of San Marcos, Attn: Title VI Complaints, 630 E Hopkins, San Marcos, TX 78666 or email [TitleVICoordinator@Sanmarcostx.gov](mailto:TitleVICoordinator@Sanmarcostx.gov)
3. Upon receipt of the complaint, the City will acknowledge receipt of the allegation to the complainant. The City shall also notify the appropriate division. The City shall review the complaint, policies and procedures associated with the complaint, circumstances under which the alleged discrimination occurred and any other pertinent factors. Within 30 days of the receipt of the complaint, the City shall respond to the complainant in writing, of the results.
4. If no violation is found and the complainant wishes to appeal, the complainant may appeal directly to the City Manager's Office, City of San Marcos, 630 E Hopkins, San Marcos, TX 78666.
5. If the City *is named* as the discriminatory party, the City shall forward the complaint to the appropriate division within the U.S. Department of Transportation, within 10 days.

### **Filing a Discrimination Complaint with the Federal Transit Administration**

Any person who believes they have been discriminated against, on the grounds of race, color, or national origin (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 200d-3) can file a complaint with the Federal Transit Administration (FTA). A complaint may also be filed by a representative on behalf of such a person.

1. Complaints shall be submitted in writing on the FTA's [Civil Rights Complaint Form](#) and must be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination.
2. Mail the completed form to Federal Transit Administration, Office of Civil Rights, Attention: Complaint Team East Building; 5<sup>th</sup> Floor-TCR; 1200 New Jersey Avenue, SE; Washington, DC 20590



### **Filing a Discrimination Complaint with the TXDOT**

1. Complaints shall be submitted in writing on TxDOT's [Complaint form](#) and must be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination.
2. Mail the completed form to Texas Department of Transportation, Office of Civil Rights, 125 East 11<sup>th</sup> Street, Austin, Texas 78701 or by faxing it to 512-416-4751.

Title VI information for filing a complaint can also be found on the City's website, [www.sanmarcostx.gov](http://www.sanmarcostx.gov)



## Cómo presentar una queja por discriminación con la ciudad

Cualquier persona que crea que ha sido discriminada por motivos de raza, color u origen nacional (donde el objetivo principal de la asistencia financiera es proporcionar empleo según 42 U.S.C. § 200d-3) puede presentar una queja ante la Ciudad. Un representante también puede presentar una queja en nombre de dicha persona.

1. Las quejas deben presentarse por escrito en el formulario de quejas de derechos civiles de la ciudad (enlaces a continuación) y deben estar firmadas por el demandante y / o el representante del demandante. Las quejas deberán exponer lo más completamente posible los hechos y circunstancias que rodean la discriminación reclamada.

[Título que cumple con el formulario-Inglés](#)

[Formulario de Queja del Título VI - Español](#)

2. Envíe por correo el formulario completado a la ciudad de San Marcos, a la atención de: Quejas del Título VI, 630 E Hopkins, San Marcos, TX 78666 or correo electrónico [TitleVICoordinator@Sanmarcostx.gov](mailto:TitleVICoordinator@Sanmarcostx.gov).

3. Al recibir la queja, la Ciudad acusará recibo de la acusación al demandante. La Ciudad también deberá notificar a la división correspondiente. La Ciudad revisará la queja, las políticas y los procedimientos asociados con la queja, las circunstancias bajo las cuales ocurrió la supuesta discriminación y cualquier otro factor pertinente. Dentro de los 30 días posteriores a la recepción de la queja, la Ciudad responderá al reclamante por escrito, de los resultados.

4. Si no se encuentra una violación y el demandante desea apelar, el demandante puede apelar directamente a la Oficina del Administrador de la Ciudad, Ciudad de San Marcos, 630 E Hopkins, San Marcos, TX 78666.

5. Si la Ciudad es nombrada como la parte discriminatoria, la Ciudad enviará la queja a la división correspondiente dentro del Departamento de Transporte de los Estados Unidos, dentro de los 10 días.

## Cómo presentar una queja por discriminación ante la Administración Federal de Tránsito

Cualquier persona que crea que ha sido discriminada por motivos de raza, color u origen nacional (donde el objetivo principal de la asistencia financiera es proporcionar empleo según 42 USC § 200d-3) puede presentar una queja ante el Tránsito Federal. Administración (FTA). Un representante también puede presentar una queja en nombre de dicha persona..

1. Las quejas se presentarán por escrito en [el Formulario](#) de quejas de derechos civiles del TLC y deben ser firmadas por el demandante y / o el representante del demandante. Las quejas deberán exponer lo más completamente posible los hechos y circunstancias que rodean la discriminación reclamada.



2. Envíe por correo el formulario completo a Federal Transit Administration, Office of Civil Rights, Attention: Complaint Team East Building; 5<sup>th</sup> Floor-TCR; 1200 New Jersey Avenue, SE; Washington, DC 20590

### **Cómo presentar una queja por discriminación con el Departamento de Transporte de Texas**

1. Las quejas se presentarán por escrito en [el formulario de quejas de TxDOT](#) y deben estar firmadas por el reclamante y / o el representante del reclamante. Las quejas deberán exponer lo más completamente posible los hechos y circunstancias que rodean la discriminación reclamada.
2. Envíe por correo el formulario completo al Departamento de Transporte de Texas, Oficina de Derechos Civiles, 125 East 11th Street, Austin, Texas 78701 o por fax al 512-416-4751.

La información del Título VI para presentar una queja también se puede encontrar en el sitio web de la Ciudad, [www.sanmarcostx.gov](http://www.sanmarcostx.gov)



## List of Transit Related Title VI Investigations, Complaints and Lawsuits

The City of San Marcos maintains a list or log of all Title VI investigations, complaints and lawsuits, pertaining to its transit-related activities.

**There have been no investigations, complaint and/or lawsuits filed against us since the last plan submission related to Transit.**

|                       | <b>Date</b><br>(Month, Day, Year) | <b>Summary</b><br>(include basis of complaint: race, color, or national origin) | <b>Status</b> | <b>Action(s) Taken</b> |
|-----------------------|-----------------------------------|---|---------------|------------------------|
| <b>Investigations</b> |                                   |   |               |                        |
| 1.                    |                                   |   |               |                        |
| <b>Lawsuits</b>       |                                   |   |               |                        |
| 1.                    |                                   |   |               |                        |
| <b>Complaints</b>     |                                   |   |               |                        |
| 1.                    |                                   |   |               |                        |

## Monitoring Program and Annual Work Plan & Accomplishment Report

This section includes information on the City’s Title VI monitoring program, which includes data collection, data analysis and reporting.

### Data Collection and Analysis

The City will collect demographic data for its Department of Transportation projects. Demographic data will include race, color, and national origin of affected citizens, as available. The collected demographic data will be analyzed to ensure there is not a disproportionate effect on protected classes of citizens.

The City will use census data, justice maps and information from the CDBG program to determine which populations are being affected by the City’s Department of Transportation projects. The Department will compile the information for the accomplishment report.

### Reporting

The Departments will prepare an annual work plan and accomplishment report of the data analysis. If deficiencies are found in the treatment of Title VI protected person, then corrective actions will be implemented. The report will include information regarding any complaints which may have been received.

The goal of the report is to update TxDOT regarding how the City is successfully implementing the Title VI Program. The report will be available for TxDOT to review annually by February 28th.



## Public Participation Plan

### Strategies and Desired Outcomes

To promote inclusive public participation, the **City of San Marcos** will employ the following strategies, as appropriate (make these determinations based on a demographic analysis of the population(s) affected, type of plan, program and/or service under consideration, and the resources available):

- Provide for early, frequent and continuous engagement by the public.
- Select accessible and varied meeting locations and times
- Use social media in addition to other resources as a way to gain public involvement
- Promote City’s website for Title VI Compliance
- Expand traditional outreach methods by visiting community centers, libraries, faith-based and institutions.

### Public Outreach Activities

The public outreach and involvement activities conducted by the **City of San Marcos** since the last Title VI Program submission are summarized in the table below. There have been none.

| Event Date | City of San Marcos Staffer(s) | Activity | Communication Method<br>(Public Notice, Posters, Social Media) | Notes |
|------------|-------------------------------|----------|--|-------|
|            |                               |          |  |       |
|            |                               |          |  |       |
|            |                               |          |  |       |
|            |                               |          |  |       |

### Demographics

In order to provide meaningful communications about TxDOT funded projects, the first step is to understand the targeted audience. This section provides the demographic profile of LEP persons in the San Marcos.

### LEP Populations

As mentioned in LEP section, according to the Census Bureau, approximately 57,193 people, age five and older, lived within the city limits of San Marcos, Texas in 2017; of which most (93.5 percent) speak English and a small percentage spoke English less well (6.5 percent). The largest LEP populations in San Marcos are Spanish speakers followed by Other Indo-European, and Asian and Pacific speakers. These LEP speakers account for 1,883 or 3.9 percent of all LEP speakers who only speak English less than “very well” 18 years or older. Of the LEP speakers 1,752 speak Spanish and 131 other languages.



## **Age and Workforce**

According to the Census Bureau, the City of San Marcos' population is 49,910 who are 16 years or over in age. 32,923 of City's population are in the work force. Of the workers 16 years of age or over, 748 are commuting to work by public transportation and 1,436 are walking to work.

## **Income below the Poverty Level**

According to the Census Bureau, 19.3% of the City of San Marcos families' income are below the poverty level and 35.8% of the people of San Marcos are below the poverty level.

## **Public Involvement Strategies, Procedures and Desired Outcomes**

### **Electronic & Web-based Media**

The City also makes use of electronic and web-based media to communicate information about planned activities and on-going projects:

- Press Releases are used to announce events that will occur within two weeks or to communicate project milestones, immediate releases of information and/or to provide notice of closures. Press releases are emailed to several media outlets and are included on the City's website.
- News Items are generally generated on the City's website in response to a press release however a news item can be created without a press release, such as when project information is updated on the City's website and/or via social media. News items serve the same purpose as press releases but do not require distribution to outside media outlets.
- Social Media – Blogs/Facebook/Twitter is used to provide communications about project progress and allow for interaction among and between stakeholders and the City. These social media outlets can also be used to generate a historical record of project progress and commentary provided by the community.

### **Stakeholders that could assist with Future Public Involvement Activities**

Community and civic organizations and businesses may be useful outlets to contact when planning and/or implementing future public involvement activities.

### **Conduct Interviews and Surveys**

Survey and interview citizens of San Marcos about their needs.

#### **Public Notice is posted:**

- City website
- City Hall bulletin board inside and outside
- Municipal building bulletin board
- Library bulletin board
- Grant Harris building bulletin board



## Federal Transit Administration Requirements

Fixed Route Transit Provider System-wide Service Standards and Policies: The following provides the City of San Marcos’ four quantitative service standards for public transportation as required by the Federal Transit Administration. The four quantitative measures required are 1. Vehicle load, 2. Vehicle headway, 3. On-time performance, and 4. Service availability.

Additionally, transit operators are required to adopt two service policies for 1. Distribution of transit amenities, and 2. Vehicle assignment.

### Service Standards:

- Vehicle load: Vehicle load is not to exceed one during off-peak periods and 1.37 (series 3000’ bus only) during the peak time continually. Below is the vehicle load for each mode of transportation offered by the City.

| Bus type      | Sitting room | Standing room                 | Vehicle load |
|---------------|--------------|-------------------------------|--------------|
| 2200’ series  | 12           | 0 (safety)                    | 1            |
| 2500’ series  | 16           | 0 (safety)                    | 1            |
| 2600’ series  | 16           | 0 (safety)                    | 1            |
| 2700’ series  | 14           | 0 (safety)                    | 1            |
| 3000’ series  | 27           | 10                            | 1.37         |
| 4000’ series* | 40           | 0 (safety, interstate travel) | 1            |

\*Used for Interurban Express no standing room for safety while traveling on the interstate

- Vehicle headway: The City of San Marcos offers two fixed-route services to the community local and interurban routes.
  - Local routes: routes serving the San Marcos Urbanized Area will have at least a 60-minute headway during operational service hours.
  - Interurban routes: route serving as a regional connector to the Austin Urbanized Area serves San Marcos limited times throughout the day. Interurban routes will have at least a 3-hour headway during operational service hours.
- On-time performance: At least 95% of vehicles will arrive with 5 minutes of the scheduled time
- Service availability: San Marcos Transit will take measures to provide public transportation service to 50% of the total population within reason. The City will utilize census data to determine the population served

### Service Policies:

- Distribution of transit amenities: We will consider installing transit shelters with benches, and waste receptacles when a least 10 people board at a location every operating day. Locations are subject to restrictions including ADA, passenger safety, and other considerations.
- Vehicle assignment: All vehicles are ADA compliant and equipped with AC and bike racks. All vehicles meet the safety needs of each route condition. Busses are assigned to routes based on ridership demand and satisfy safety needs. Certain vehicles are assigned to specific routes when required by operating conditions (smaller buses are needed when road and route turns are narrow)



### **Vital Documents Translated into to Spanish**

- Title VI Complaint Form
- Notice of person's rights under Title VI
- Title VI Filing a Discrimination Complaint Process
- Route changes/detour notifications
- Press releases
- Riders Guide

### **Sub-recipient Monitoring**

The City Transit division currently does not have any sub-recipients.

### **Site Equity Analysis:**

N/A as we have not built a transit facility

### **Existing Public Involvement Strategies, Procedures and Desired Outcomes**

#### **Electronic & Web-based Media**

The City also makes use of electronic and web-based media to communicate information about planned activities and on-going projects:

- Press Releases are used to announce events that will occur within two weeks or to communicate project milestones, immediate releases of information and/or to provide notice of closures. Press releases are emailed to several media outlets and are included on the City's website.
- News Items are generally generated on the City's website in response to a press release however a news item can be created without a press release, such as when project information is updated on the City's website and/or via social media. News items serve the same purpose as press releases but do not require distribution to outside media outlets.
- Social Media – Blogs/Facebook/Twitter is used to provide communications about project progress and allow for interaction among and between stakeholders and the City. These social media outlets can also be used to generate a historical record of project progress and commentary provided by the community.

#### **Print Media**

The City uses several forms of print media:

- Fliers are produced in a fact sheet format and are used primarily for project-specific information about project activities that will occur in the surrounding area. They are distributed by hand to potentially affected stakeholders. This print medium could be translated into Spanish and could be interpreted into other languages, upon request.
- Door Hangers contain similar content and serve the same purpose as fliers. They are distributed by hand to potentially affected stakeholders to share project-specific information about project work in the surrounding area.
- Formal Letters are produced on standard City letterhead and mailed; they are used to communicate with specific individuals and/or businesses and they serve primarily as project notification and/or correspondence.



## Public Meetings

The City employs several different types of public meetings based on the communication needs:

- Neighborhood Meetings are less formal than public meetings; they generally involve a discussion between City staff and community members about specific concerns, related to projects which directly impact them. The function of a neighborhood meeting is to provide information about a proposed project, ensure public participation in the development of the project, and to keep the community informed during the project's life cycle.
- Open Houses are generally informal meetings that allow for participants to come and go as they please, ask questions of City staff, and provide written and/or verbal comments. The City uses this meeting format to provide information to the community and to solicit community feedback on proposed projects. These meetings are often conducted when a program or service is beginning, terminating and/or changing.



### **Recommended Public Involvement Strategies, Procedures and Desired Outcomes**

Based on the demographic characteristics of the City and the public involvement strategies currently being implemented, below are some recommendations to enhance the current public involvement approach.

There are a variety of ways to communicate these messages to the general public including mail, social media, television, newspapers, via the utility bill, and in-person. LEP populations tend to prefer communications via mass media outlets that are in their language and/or in-person by an informed and/or trusted person, such as someone from a community organization that can speak their language. Elderly populations tend to trust notices that are provided in print.

In addition to these strategies, local venues can be utilized to communicate these messages. Each interaction should be targeted as specifically as possible to the needs of the audience– meetings with neighborhood groups, religious congregations, and various other community organizations. City staff could offer to speak at outreach events held by community organizations. These smaller venues provide additional opportunities for meaningful exchange of information and opinion.

### **Translate Outreach Materials**

A Spanish interpreter can be present upon request to provide interpretive services for other public involvement activities, such as surveys and meetings. The presence of the interpreter should be identified at meetings with signs clearly posted to let participants know that this service is available. Meeting materials (including exhibits, agendas, comment cards, handouts, presentations, pocket cards, postcards, newsletters, etc.) could be translated into Spanish, as needed and if requested in advance, or the interpreter would provide competent oral translation of meeting materials. Other technical exhibits could use pictograms and photos to communicate the intended message with fewer words.

### **Communication Strategies and Consideration Low-Income, and/or LEP Populations**

There are many ways that the City can help ensure meaningful communications are provided to low-income and/or LEP populations. One way the City can provide effective communications to the local low-income, and/or LEP community is to tailor public involvement activities to the local population they are trying to reach. This process starts with the collection of demographic data, including languages spoken in the project area, but includes other considerations.

### **Translation and Interpretive Services**

The City has identified the specific language services that the community members may request which is provided in the LEP Plan. Based on the findings in the LEP Plan, Spanish is the predominant language spoken by persons with LEP in San Marcos. The following are some recommendations; see the LEP Plan for a more robust discussion of LEP considerations and strategies.

- Public meeting announcements should be translated into Spanish. Translated notification could be added to the English version of these announcements indicating that interpretive services are available upon request and free of cost.
- The City should provide at least one Spanish interpreter at each public meeting upon request.



### **Identify and Engage a Trusted and Well-known Community Member or Organization**

Best management practices, as described in guidance and by professional public involvement organizations, suggest that coordination with a trusted community member or organization can improve the communication strategy. These people can help gain insight into the interests, concerns, and desires of the community; help share project information in the community (word of mouth by a trusted community member may result in better understanding and may engender trust); and may be able to present information at meetings and/or serve as facilitators.

The following are some sample questions that could be asked of a trusted community member and/or organization to start the learning process:

- What do you know about the project?
- Do you think there is a lot of interest in this project within your community?
- How important is this project to the local community?
- What are the community's thoughts about this project?
- What is the primary way you get information about local issues? (Family and friends, a certain newspaper, web site, a gathering spot, etc.)
- What are the most effective ways to reach out to and engage your community? (Public meetings, events, newsletters, etc.?)
- In your experience, what public meeting formats have been most effective in reaching your community? Is there a better way of reaching them than public meetings? Is there a community expectation that the meetings be held in a particular language?
- Can you suggest a good location to hold a community meeting about this project (name and contact)? Are there any days of the week or times you think work better than others?
- Does your neighborhood/association hold regular meetings that the project team could attend? Or are there specific community events that would present opportunity for the project team to engage the community?
- Is there a neighborhood/association list-service or on-line forum through which we can provide information about opportunities to stay informed and provide feedback? Does your group/association/community have a newsletter?
- What can we learn from any earlier efforts to involve this community (lessons learned, what worked? What could have gone better?)
- Who else should be involved (names and contacts)?
- Can you recommend someone who is well known and trusted in the community to help distribute project information, gather feedback and act as project liaison?

### **Plan Re-evaluation and Revisions Policy**

Evaluation can help track outreach efforts, discover dissemination problems early, and find out whether communication strategies have impacted communications and/or relations with local communities. The results can help improve future efforts.

The City should reconsider the effectiveness of their communication strategies and procedures every two years (on the same schedule as the re-evaluation of the LEP Plan). The following discussion describes what should occur during this evaluation step.



### **Conduct Internal Monitoring**

It is important to obtain informal feedback from internal as well as external stakeholders. This could be in the form of a team meeting including City staff who may be involved in the process. Questions that could be discussed in this meeting include:

- Is the input received from the public useful in the decision making process? If so, how has it been useful? If not, how could it be improved?
- Did the public receive the information they needed to provide meaningful input?
- Has anything occurred to warrant changes to the existing plan?
- Is the internal commitment of all parties still in place?

### **Obtain Feedback from Community Organizations**

The City should contact community organizations to ask if they would be willing to conduct a follow-up survey. This outreach would allow the City to determine if there have been any noticeable changes in the demographics of the population in their service area, to receive input on whether the public involvement strategies currently in place and efforts to inform the City and LEP communities of the availability of language assistance are working, and to continue to inform the LEP community of new or updated language assistance.

### **Meeting Evaluations**

A short, to-the-point questionnaire could be used at the end of public meetings to get a sense of how effective the meeting was perceived to be by the public. This questionnaire could be placed on the back of a comment card or provided as a separate handout. Possible questions could include:

- How did you hear about tonight's meeting?
- On a scale from 1 (did not like) to 5 (liked very much), rate the location of this meeting?
- On a scale from 1 to 5, rate the information presented and on display?
- On a scale from 1 to 5, how would you rate the "Open House" format used for tonight's meeting?
- In which language do you prefer to receive project information?
- Do you have any other comments?

### **Make Modifications to PPP Plan as Necessary**

Based on the feedback received from the internal monitoring and feedback from community organizations, the City would likely need to make incremental changes to the public involvement strategies as well as staff training.

Please review the LEP Plan for more information on how language assistance measures will be monitored and reevaluated.



**Table 1 – Selected Economic Characteristics in San Marcos Texas 2012-2016**

| Subject  | San Marcos city, Texas |                 |         |                         |
|--|------------------------|-----------------|---------|-------------------------|
|  | Estimate               | Margin of Error | Percent | Percent Margin of Error |
| <b>EMPLOYMENT STATUS</b>                                     |                        |                 |         |                         |
| Population 16 years and over                                 | 49,910                 | +/-710          | 49,910  | (X)                     |
| In labor force   | 32,923                 | +/-990          | 66.0%   | +/-1.8                  |
| Civilian labor force   | 32,828                 | +/-1,003        | 65.8%   | +/-1.8                  |
| Employed   | 30,069                 | +/-1,079        | 60.2%   | +/-2.0                  |
| Unemployed   | 2,759                  | +/-521          | 5.5%    | +/-1.0                  |
| Armed Forces   | 95                     | +/-75           | 0.2%    | +/-0.2                  |
| Not in labor force   | 16,987                 | +/-931          | 34.0%   | +/-1.8                  |
| Civilian labor force   | 32,828                 | +/-1,003        | 32,828  | (X)                     |
| Unemployment Rate  | (X)                    | (X)             | 8.4%    | +/-1.6                  |
| <b>Females 16 years and over</b>                             |                        |                 |         |                         |
| In labor force   | 26,051                 | +/-666          | 26,051  | (X)                     |
| Civilian labor force   | 15,727                 | +/-888          | 60.4%   | +/-2.7                  |
| Employed   | 15,727                 | +/-888          | 60.4%   | +/-2.7                  |
| Unemployed   | 14,420                 | +/-878          | 55.4%   | +/-2.8                  |
| Own children of the householder under 6 years                | 2,831                  | +/-488          | 2,831   | (X)                     |
| All parents in family in labor force                         | 2,284                  | +/-459          | 80.7%   | +/-7.1                  |
| Own children of the householder 6 to 17 years                | 5,173                  | +/-660          | 5,173   | (X)                     |
| All parents in family in labor force                         | 3,906                  | +/-560          | 75.5%   | +/-8.9                  |
| <b>COMMUTING TO WORK</b>                                     |                        |                 |         |                         |
| Workers 16 years and over                                    | 29,667                 | +/-1,047        | 29,667  | (X)                     |
| Car, truck, or van -- drove alone                            | 23,166                 | +/-1,062        | 78.1%   | +/-2.3                  |
| Car, truck, or van -- carpooled                              | 2,750                  | +/-682          | 9.3%    | +/-2.2                  |
| Public transportation (excluding taxicab)                    | 748                    | +/-275          | 2.5%    | +/-0.9                  |
| Walked   | 1,436                  | +/-370          | 4.8%    | +/-1.3                  |
| Other means  | 768                    | +/-199          | 2.6%    | +/-0.7                  |
| Worked at home   | 799                    | +/-247          | 2.7%    | +/-0.8                  |
| Mean travel time to work (minutes)                           | 21.9                   | +/-1.3          | (X)     | (X)                     |
| <b>OCCUPATION</b>  |                        |                 |         |                         |
| Civilian employed population 16 years and over               | 30,069                 | +/-1,079        | 30,069  | (X)                     |
| Management, business, science, and arts occupations          | 8,440                  | +/-803          | 28.1%   | +/-2.6                  |
| Service occupations  | 7,155                  | +/-901          | 23.8%   | +/-2.8                  |
| Sales and office occupations                                 | 9,001                  | +/-996          | 29.9%   | +/-3.1                  |
| Natural resources, construction, and maintenance occupations | 2,464                  | +/-449          | 8.2%    | +/-1.5                  |
| Production, transportation, and material moving occupations  | 3,009                  | +/-593          | 10.0%   | +/-1.9                  |
| <b>INDUSTRY</b>  |                        |                 |         |                         |
| Civilian employed population 16 years and over               | 30,069                 | +/-1,079        | 30,069  | (X)                     |
| Agriculture, forestry, fishing and hunting, and mining       | 345                    | +/-155          | 1.1%    | +/-0.5                  |
| Construction   | 1,731                  | +/-435          | 5.8%    | +/-1.4                  |



| Subject  | San Marcos city, Texas |                 |         |                         |
|--|------------------------|-----------------|---------|-------------------------|
|  | Estimate               | Margin of Error | Percent | Percent Margin of Error |
| Manufacturing  | 1,453                  | +/-420          | 4.8%    | +/-1.4                  |
| Wholesale trade  | 715                    | +/-264          | 2.4%    | +/-0.9                  |
| Retail trade   | 6,245                  | +/-832          | 20.8%   | +/-2.6                  |
| Transportation and warehousing, and utilities  | 929                    | +/-430          | 3.1%    | +/-1.4                  |
| Information  | 224                    | +/-92           | 0.7%    | +/-0.3                  |
| Finance and insurance, and real estate and rental and leasing                              | 942                    | +/-247          | 3.1%    | +/-0.8                  |
| Professional, scientific, and management, and administrative and waste management services | 2,095                  | +/-403          | 7.0%    | +/-1.3                  |
| Educational services, and health care and social assistance                                | 7,441                  | +/-608          | 24.7%   | +/-2.1                  |
| Arts, entertainment, and recreation, and accommodation and food services                   | 6,098                  | +/-864          | 20.3%   | +/-2.7                  |
| Other services, except public administration   | 1,032                  | +/-307          | 3.4%    | +/-1.0                  |
| Public administration  | 819                    | +/-226          | 2.7%    | +/-0.7                  |
| <b>CLASS OF WORKER</b>   |                        |                 |         |                         |
| Civilian employed population 16 years and over   | 30,069                 | +/-1,079        | 30,069  | (X)                     |
| Private wage and salary workers  | 24,279                 | +/-1,101        | 80.7%   | +/-1.9                  |
| Government workers   | 4,581                  | +/-586          | 15.2%   | +/-2.0                  |
| Self-employed in own not incorporated business workers                                     | 1,132                  | +/-284          | 3.8%    | +/-0.9                  |
| Unpaid family workers  | 77                     | +/-113          | 0.3%    | +/-0.4                  |
| <b>INCOME AND BENEFITS (IN 2016 INFLATION-ADJUSTED DOLLARS)</b>                            |                        |                 |         |                         |
| Total households   | 21,421                 | +/-602          | 21,421  | (X)                     |
| Less than \$10,000   | 3,691                  | +/-423          | 17.2%   | +/-1.8                  |
| \$10,000 to \$14,999   | 1,676                  | +/-331          | 7.8%    | +/-1.5                  |
| \$15,000 to \$24,999   | 3,529                  | +/-530          | 16.5%   | +/-2.3                  |
| \$25,000 to \$34,999   | 2,848                  | +/-448          | 13.3%   | +/-2.1                  |
| \$35,000 to \$49,999   | 2,861                  | +/-418          | 13.4%   | +/-1.9                  |
| \$50,000 to \$74,999   | 3,217                  | +/-443          | 15.0%   | +/-2.0                  |
| \$75,000 to \$99,999   | 1,514                  | +/-272          | 7.1%    | +/-1.3                  |
| \$100,000 to \$149,999   | 1,287                  | +/-263          | 6.0%    | +/-1.2                  |
| \$150,000 to \$199,999   | 448                    | +/-142          | 2.1%    | +/-0.7                  |
| \$200,000 or more  | 350                    | +/-139          | 1.6%    | +/-0.7                  |
| Median household income (dollars)  | 30,985                 | +/-1,951        | (X)     | (X)                     |
| Mean household income (dollars)  | 46,004                 | +/-2,931        | (X)     | (X)                     |
| With earnings  | 17,935                 | +/-620          | 83.7%   | +/-2.1                  |
| Mean earnings (dollars)  | 46,447                 | +/-3,261        | (X)     | (X)                     |
| With Social Security   | 3,052                  | +/-314          | 14.2%   | +/-1.4                  |
| Mean Social Security income (dollars)  | 17,014                 | +/-1,714        | (X)     | (X)                     |
| With retirement income   | 1,608                  | +/-221          | 7.5%    | +/-1.1                  |
| Mean retirement income (dollars)   | 18,862                 | +/-2,833        | (X)     | (X)                     |
| With Supplemental Security Income  | 745                    | +/-216          | 3.5%    | +/-1.0                  |
| Mean Supplemental Security Income (dollars)  | 8,526                  | +/-1,091        | (X)     | (X)                     |
| With cash public assistance income   | 351                    | +/-109          | 1.6%    | +/-0.5                  |
| Mean cash public assistance income (dollars)   | 2,664                  | +/-1,150        | (X)     | (X)                     |
| With Food Stamp/SNAP benefits in the past 12 months  | 2,363                  | +/-333          | 11.0%   | +/-1.6                  |



| Subject  | San Marcos city, Texas |                 |         |                         |
|--|------------------------|-----------------|---------|-------------------------|
|  | Estimate               | Margin of Error | Percent | Percent Margin of Error |
| <b>Families</b>  | 8,621                  | +/-507          | 8,621   | (X)                     |
| Less than \$10,000   | 634                    | +/-230          | 7.4%    | +/-2.6                  |
| \$10,000 to \$14,999   | 300                    | +/-145          | 3.5%    | +/-1.6                  |
| \$15,000 to \$24,999   | 1,391                  | +/-355          | 16.1%   | +/-3.9                  |
| \$25,000 to \$34,999   | 875                    | +/-226          | 10.1%   | +/-2.7                  |
| \$35,000 to \$49,999   | 1,415                  | +/-317          | 16.4%   | +/-3.5                  |
| \$50,000 to \$74,999   | 1,606                  | +/-327          | 18.6%   | +/-3.5                  |
| \$75,000 to \$99,999   | 985                    | +/-258          | 11.4%   | +/-3.0                  |
| \$100,000 to \$149,999   | 884                    | +/-227          | 10.3%   | +/-2.7                  |
| \$150,000 to \$199,999   | 297                    | +/-125          | 3.4%    | +/-1.5                  |
| \$200,000 or more  | 234                    | +/-103          | 2.7%    | +/-1.2                  |
| Median family income (dollars)                                     | 46,736                 | +/-3,390        | (X)     | (X)                     |
| Mean family income (dollars)                                       | 61,866                 | +/-4,673        | (X)     | (X)                     |
| Per capita income (dollars)  | 18,541                 | +/-1,073        | (X)     | (X)                     |
| <b>Nonfamily households</b>  | 12,800                 | +/-725          | 12,800  | (X)                     |
| Median nonfamily income (dollars)                                  | 23,014                 | +/-2,118        | (X)     | (X)                     |
| Mean nonfamily income (dollars)                                    | 33,972                 | +/-3,997        | (X)     | (X)                     |
| Median earnings for workers (dollars)                              | 14,901                 | +/-1,252        | (X)     | (X)                     |
| Median earnings for male full-time, year-round workers (dollars)   | 33,754                 | +/-3,182        | (X)     | (X)                     |
| Median earnings for female full-time, year-round workers (dollars) | 30,556                 | +/-2,257        | (X)     | (X)                     |
| <b>HEALTH INSURANCE COVERAGE</b>                                   |                        |                 |         |                         |
| Civilian noninstitutionalized population                           | 56,774                 | +/-524          | 56,774  | (X)                     |
| With health insurance coverage                                     | 46,334                 | +/-1,172        | 81.6%   | +/-1.9                  |
| With private health insurance                                      | 38,356                 | +/-1,324        | 67.6%   | +/-2.3                  |
| With public coverage   | 11,426                 | +/-1,059        | 20.1%   | +/-1.8                  |
| No health insurance coverage                                       | 10,440                 | +/-1,047        | 18.4%   | +/-1.9                  |
| Civilian noninstitutionalized population under 18 years            | 8,755                  | +/-707          | 8,755   | (X)                     |
| No health insurance coverage                                       | 859                    | +/-406          | 9.8%    | +/-4.6                  |
| Civilian noninstitutionalized population 18 to 64 years            | 44,138                 | +/-755          | 44,138  | (X)                     |
| In labor force:  | 31,898                 | +/-995          | 31,898  | (X)                     |
| Employed:  | 29,172                 | +/-1,074        | 29,172  | (X)                     |
| With health insurance coverage                                     | 22,601                 | +/-990          | 77.5%   | +/-2.7                  |
| With private health insurance                                      | 21,641                 | +/-1,023        | 74.2%   | +/-2.9                  |
| With public coverage   | 1,303                  | +/-318          | 4.5%    | +/-1.1                  |
| No health insurance coverage                                       | 6,571                  | +/-877          | 22.5%   | +/-2.7                  |
| Unemployed:  | 2,726                  | +/-524          | 2,726   | (X)                     |
| With health insurance coverage                                     | 2,111                  | +/-468          | 77.4%   | +/-6.6                  |
| With private health insurance                                      | 1,782                  | +/-421          | 65.4%   | +/-8.5                  |
| With public coverage   | 396                    | +/-190          | 14.5%   | +/-6.3                  |
| No health insurance coverage                                       | 615                    | +/-201          | 22.6%   | +/-6.6                  |
| Not in labor force:  | 12,240                 | +/-830          | 12,240  | (X)                     |



**Table 2 – Characteristics of People by Language Spoken at Home in San Marcos Texas 2012-2016**

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

| Subject                                    | San Marcos city, Texas |                 |          |                 |   |                 |   |                 |                                     |                 |   |                 |
|--|------------------------|-----------------|----------|-----------------|---|-----------------|---|-----------------|-------------------------------------|-----------------|---|-----------------|
|  | Total                  |                 | Percent  |                 | Percent of specified language speakers          |                 |   |                 |                                     |                 |   |                 |
|  | Estimate               | Margin of Error | Estimate | Margin of Error | Speak English only or speak English "very well" |                 | Percent speak English only or speak English "very well" |                 | Speak English less than "very well" |                 | Percent speak English less than "very well" |                 |
|  |                        |                 |          |                 | Estimate  | Margin of Error | Estimate  | Margin of Error | Estimate                            | Margin of Error | Estimate                                    | Margin of Error |
| Population 5 years and over                | 54,953                 | +/-691          | (X)      | (X)             | 51,177  | +/-687          | 93.1%   | +/-1.4          | 3,776                               | +/-775          | 6.9%  | +/-1.4          |
| Speak only English                         | 39,889                 | +/-1,253        | 72.6%    | +/-2.3          | (X)   | (X)             | (X)   | (X)             | (X)                                 | (X)             | (X)   | (X)             |
| Speak a language other than English        | 15,064                 | +/-1,323        | 27.4%    | +/-2.3          | 11,288  | +/-1,008        | 74.9%   | +/-4.1          | 3,776                               | +/-775          | 25.1%                                       | +/-4.1          |
| <b>SPEAK A LANGUAGE OTHER THAN ENGLISH</b> |                        |                 |          |                 |   |                 |   |                 |                                     |                 |   |                 |
| Spanish                                    | 13,346                 | +/-1,244        | 24.3%    | +/-2.2          | 10,037  | +/-870          | 75.2%   | +/-4.5          | 3,309                               | +/-779          | 24.8%                                       | +/-4.5          |
| 5 to 17 years old                          | 1,703                  | +/-578          | 3.1%     | +/-1.0          | 1,220   | +/-387          | 71.6%   | +/-15.4         | 483                                 | +/-350          | 28.4%                                       | +/-15.4         |
| 18 to 64 years old                         | 10,308                 | +/-865          | 18.8%    | +/-1.5          | 8,159   | +/-696          | 79.2%   | +/-4.3          | 2,149                               | +/-531          | 20.8%                                       | +/-4.3          |
| 65 years old and over                      | 1,335                  | +/-236          | 2.4%     | +/-0.4          | 658   | +/-195          | 49.3%   | +/-12.9         | 677                                 | +/-217          | 50.7%                                       | +/-12.9         |
| Other Indo-European languages              | 725                    | +/-291          | 1.3%     | +/-0.5          | 633   | +/-265          | 87.3%   | +/-13.6         | 92                                  | +/-107          | 12.7%                                       | +/-13.6         |
| 5 to 17 years old                          | 25                     | +/-40           | 0.0%     | +/-0.1          | 25  | +/-40           | 100.0%  | +/-63.7         | 0                                   | +/-30           | 0.0%  | +/-63.7         |
| 18 to 64 years old                         | 668                    | +/-278          | 1.2%     | +/-0.5          | 576   | +/-252          | 86.2%   | +/-14.7         | 92                                  | +/-107          | 13.8%                                       | +/-14.7         |
| 65 years old and over                      | 32                     | +/-47           | 0.1%     | +/-0.1          | 32  | +/-47           | 100.0%  | +/-56.3         | 0                                   | +/-30           | 0.0%  | +/-56.3         |
| Asian and Pacific Island languages         | 795                    | +/-290          | 1.4%     | +/-0.5          | 493   | +/-254          | 62.0%   | +/-17.8         | 302                                 | +/-160          | 38.0%                                       | +/-17.8         |
| 5 to 17 years old                          | 66                     | +/-67           | 0.1%     | +/-0.1          | 66  | +/-67           | 100.0%  | +/-39.2         | 0                                   | +/-30           | 0.0%  | +/-39.2         |
| 18 to 64 years old                         | 711                    | +/-260          | 1.3%     | +/-0.5          | 427   | +/-221          | 60.1%   | +/-18.7         | 284                                 | +/-158          | 39.9%                                       | +/-18.7         |
| 65 years old and over                      | 18                     | +/-29           | 0.0%     | +/-0.1          | 0   | +/-30           | 0.0%  | +/-75.1         | 18                                  | +/-29           | 100.0%                                      | +/-75.1         |
| Other languages                            | 198                    | +/-204          | 0.4%     | +/-0.4          | 125   | +/-100          | 63.1%   | +/-32.1         | 73                                  | +/-116          | 36.9%                                       | +/-32.1         |
| 5 to 17 years old                          | 4                      | +/-8            | 0.0%     | +/-0.1          | 4   | +/-8            | 100.0%  | +/-100.0        | 0                                   | +/-30           | 0.0%  | +/-100.0        |
| 18 to 64 years old                         | 183                    | +/-202          | 0.3%     | +/-0.4          | 110   | +/-98           | 60.1%   | +/-32.1         | 73                                  | +/-116          | 39.9%                                       | +/-32.1         |
| 65 years old and over                      | 11                     | +/-19           | 0.0%     | +/-0.1          | 11  | +/-19           | 100.0%  | +/-96.0         | 0                                   | +/-30           | 0.0%  | +/-96.0         |



**City of San Marcos**

630 E Hopkins  
San Marcos Texas 78666

[www.sanmarcostx.gov](http://www.sanmarcostx.gov)

Pete Binion  
Transit Manager/Title VI for  
Transit  
[Pbinion@Sanmarcostx.gov](mailto:Pbinion@Sanmarcostx.gov)  
512.393.8451

**TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

**TITLE VI NOTICE OF PROTECTIONS AGAINST  
DISCRIMINATION**

The City of San Marcos (COSM) operates its programs without regard to race, color or national origin.

To request or receive additional information on its discrimination obligations, including its complaint procedures, please contact the person listed below:

**Title VI Coordinator**

**630 E Hopkins**

**San Marcos, TX 78666**

**Telephone: 512.393.8000**

**Email Address: [TitleVICompliance@SanMarcostx.gov](mailto:TitleVICompliance@SanMarcostx.gov)**

To file a discrimination complaint, the written complaint must be filed to the address above within 180 days of the alleged discrimination. To accommodate limited English proficient individuals, oral complaints to be documented and/or translated may also be given at the above address. Written complaints may also be filed with the U. S. Department of Transportation/ Federal Transit Administration (FTA) no later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by FTA.

**TÍTULO VI DE LA LEY DE DERECHOS CIVILES DE 1964**

**TÍTULO VI AVISO DE PROTECCIONES CONTRA LA  
DISCRIMINACIÓN**

**City of San Marcos (COSM) opera sus programas sin distinción de raza,  
color o origen nacional.**

**Para solicitar o recibir información adicional sobre sus obligaciones de  
discriminación, incluyendo sus procedimientos queja, por favor póngase  
en contacto con la persona indicada a continuación:**

**Coordinador del título VI**

**630 E Hopkins**

**San Marcos, TX 78666**

**Teléfono: 512.393.8000**

**Dirección de correo electrónico: [TitleVICompliance@SanMarcostx.gov](mailto:TitleVICompliance@SanMarcostx.gov)**

**Para presentar una queja por discriminación, se debe presentar la queja  
por escrito a la dirección arriba dentro de 180 días de la supuesta  
discriminación. Para dar cabida a personas competentes inglés limitadas,  
quejas orales ser documentado o traducido también pueden  
administrarse en la dirección arriba indicada. Las quejas escritas pueden  
también ser presentadas con el u. S. Departamento de Transportación  
Federal Transit Administration (FTA) no más tardar 180 días después de la  
fecha de la supuesta discriminación, a menos que el tiempo para la  
presentación se prolonga por TLC.**



Legislation Text

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**File #:** Res. 2020-230R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-230R, approving a Chapter 380 Economic Development Incentive Agreement with DBI San Marcos Property, L.P., providing incentives in the form of refunds of a percentage of real property taxes over three years for the development of approximately 174,515 square feet of space for lease to commercial and industrial users at 1551 Clovis Barker; authorizing the City Manager, or his designee, to execute said agreement; and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** City Manager

**Amount & Source of Funding**

**Funds Required:** Click or tap here to enter text.

**Account Number:** Click or tap here to enter text.

**Funds Available:** Click or tap here to enter text.

**Account Name:** Click or tap here to enter text.

**Fiscal Note:**

**Prior Council Action:** Click or tap here to enter text.

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

N/A

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.

Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Vision San Marcos - A River Runs Through Us

**Background Information:**

Bearden Investments (DBI San Marcos Property, LP) intends to construct 3 separate speculative shell buildings at 1551 Clovis Barker Road in San Marcos. The estimated total square footage of the new buildings is 174,515; building 1 - 62,194, building 2 - 77,703, building 3 - 34,618. The \$10,500,000 investment in real property will allow for the immediate availability of space for commercial, office, warehouse, and light industrial users to lease. The investment is meant to help address the lack of available spec facilities in San Marcos, which will make the City more competitive for new projects. Construction is estimated to begin in November of 2020 and be complete by October 2021.

The City is considering an economic development incentive to the developer. The proposed incentive is a 3-year rebate of real property tax; year 1 - 100%, year 2 - 75%, year 3 - 50%. The rebate is only paid if the buildings are not leased, incentives void as buildings become occupied. The maximum rebate the developer can receive is \$147,000 and the minimum tax revenue the City can receive is \$50,000.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

**Recommendation:**

Staff recommends approval.

**RESOLUTION NO. 2020- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH DBI SAN MARCOS PROPERTY, L.P., PROVIDING INCENTIVES IN THE FORM OF REFUNDS OF A PERCENTAGE OF REAL PROPERTY TAXES OVER THREE YEARS FOR THE DEVELOPMENT OF APPROXIMATELY 174,515 SQUARE FEET OF SPACE FOR LEASE TO COMMERCIAL AND INDUSTRIAL USERS AT 1551 CLOVIS BARKER; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE SAID AGREEMENT; AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The attached Chapter 380 Economic Development Incentive Agreement (the "Agreement") is approved.

**PART 2.** The City Manager, or his designee, is authorized to execute the Agreement on behalf of the City.

**PART 3.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on October 20, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

## **CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

As of October 20, 2020 (the “Effective Date”) this agreement (the “Agreement”) is entered into between the City of San Marcos, Texas (the “City”), a Texas municipal corporation, and DBI San Marcos Property, L.P., a Texas limited partnership (“Developer”). The City and Developer may also be collectively referred to as the “Parties” or, individually, as a “Party.”

### **PART 1. RECITALS**

**Section 1.01.** The City seeks to attract and retain a diverse range of businesses that provide well paying jobs necessary for economic stability and growth.

**Section 1.02.** Developer proposes to construct three speculative or “spec” shell buildings at 1551 Clovis Barker Road with a minimum cumulative area of 174,515 square feet that may be leased for commercial, office, warehouse or light industrial uses and finished out for each tenant’s needs. Developer seeks an economic development incentive from the City for the construction of such facilities.

**Section 1.03.** The City believes that the availability of such commercial, office, warehouse and light industrial space for lease will attract businesses seeking to relocate to or expand in the City in furtherance of the City’s job creation and economic development goals and wishes to provide an incentive to Developer for the construction of the facilities.

**Section 1.04.** The City is authorized under Chapter 380 of the Texas Local Government Code (“Chapter 380”) to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity in the City. Providing an incentive to Developer under the terms and conditions of this Agreement is consistent with the public purposes of Chapter 380 and the economic development objectives of the City.

**Section 1.05.** For the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the Parties want to enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

## **ARTICLE II DEFINITIONS**

**Section 2.01.** “Base Tax Year Value” means the ad valorem tax value of the Land (as defined below) as established by the Hays County Tax Assessor-Collector’s Office for calendar year 2020.

**Section 2.02.** “Building Improvements” means a minimum of 174,515 square feet of new “spec” buildings located on the Land consisting of a 62,194 minimum square foot building, a 77,703 minimum square foot building, and a 34,618 minimum square foot building, each suitable for lease to and finish out by one or more tenants for the tenant’s specific commercial, office, warehouse or light industrial uses as allowed under applicable zoning and other land use regulations and ordinances. The Building Improvements shall be constructed in substantial accordance with the specifications detailed in the 100 percent construction documents for project number 1803 prepared by Beatty Palmer Architects dated June 7, 2019 excerpts of which are included in Exhibit “A,” attached hereto and made a part hereof for all purposes, and the remainder of which are on file with the City’s Permit Center. Notwithstanding the foregoing, the City Manager of the City, or his designee, during the permitting and construction phases for each building, may approve modifications to the specifications for the Building Improvements necessary for the Building Improvements to comply with applicable building codes and ordinances.

**Section 2.03.** “Grant Payments” means the City’s annual payments to the Developer for a period of three years during the Term of amounts equal to a percentage of Real Property Taxes

paid by Developer and received by the City in the manner provided in this Agreement below.

**Section 2.04.** “Land” means the tract of real property and improvements thereon within the city limits of the City of San Marcos, Texas located at 1551 Clovis Barker Road, San Marcos, Texas 78666 upon which the Building Improvements will be constructed. A map, plat or survey of the Land is attached as Exhibit “B” and made apart hereof for all purposes.

**Section 2.05.** “Real Property Taxes” in any given year during the Term of this Agreement are the City’s share of the ad valorem taxes on the Land attributable solely to the Building Improvements received from the Tax Office in excess of the Base Tax Year Value.

**Section 2.06.** “Tax Office” means the Hays County Tax Assessor-Collector.

**Section 2.07.** The “Term” of this Agreement shall commence on the Effective Date and continue until the date that the third Grant Payment is due and finally paid, or such earlier date of termination as provided under this Agreement.

### **ARTICLE III DEVELOPER’S OBLIGATIONS**

**Section 3.01. Construction of Building Improvements.** Developer shall begin construction of the Building Improvements on or before January 4, 2020, subject to any extensions due to events of *force majeure*. For purposes of this Agreement the date of beginning of construction shall be the date on which a building permit for one or more of the three spec buildings comprising the Building Improvements is issued by the City. Developer shall complete construction of the Building Improvements no later than October 31, 2021, subject to any extensions approved by the City Manager of the City, or his designee, due to events of *force majeure*. For purposes of this Agreement, the date of completion of construction shall be the date on which a final certificate of occupancy for the last of the three spec buildings comprising the Building Improvements is issued by the City. Neither a conditional, nor a temporary certificate of

occupancy shall constitute a certificate of occupancy for purposes of this section.

**Section 3.02. Minimum Capital Investment.** Developer shall make a minimum capital investment in the Building Improvements of \$10,500,000.00.

#### **ARTICLE IV GRANT PAYMENTS FROM THE CITY**

**Section 4.01. Three Year Payment Period.** Upon Developer's satisfactory completion of the Building Improvements Developer shall be eligible to receive three Grant Payments from the City as follows:

- a. an amount equal to 100 percent of Real Property Taxes paid to and received by the City in the first full calendar year after the Building Improvements are completed;
- b. an amount equal to 75 percent of Real Property Taxes paid to and received by the City for the second calendar year thereafter; and
- c. an amount equal to 50 percent of Real Property Taxes paid to and received by the City for the third calendar year thereafter.

For example, if the Building Improvements are completed in 2021, the full assessed value for the completed Building Improvements will not be recognized until January 1, 2022. Thus, 2022 would be considered the first full calendar year after the Building Improvements are completed. The first Grant Payment would, therefore, be calculated based upon Real Property Taxes assessed in 2022.

**Section 4.02. Time for Payment.** Grant Payments will be made by the City on or before March 31 of the calendar year immediately following the year in which the Real Property Taxes upon which the Grant Payment amount is based are assessed. Following the example in Section 4.01, therefore, a Grant Payment that is based on the Real Property Taxes collected for 2022 would be paid by the City on or before March 31, 2023. Notwithstanding the foregoing, the City shall not be required to make a Grant Payment during any applicable year unless and until:

- a. the Real Property Taxes for the prior year are received by the City from the Tax Office;
- b. funds equivalent in value to the applicable Grant Payment amount are appropriated for the specific purpose of making a Grant Payment as part of the City's ordinary budget and appropriations approval process; and
- c. the Developer has submitted all information required under this Agreement necessary to verify its compliance.

**Section 4.03. Grant Payments Reduced as Buildings Leased.** If any of the three spec buildings comprising the Building Improvements becomes fully leased, then any Grant Payment otherwise owed by the City for the year during which such full leasing occurred will be reduced by an amount equal to the percentage of Real Property Taxes attributable to each such fully leased building (*See* table below). For instance, if no building is fully leased in 2022, Developer is eligible to receive a full Grant Payment from the City by March 31, 2023. If one spec building subsequently becomes fully leased in 2023, Developer would retain the previously paid Grant Payment, but the Grant Payment for the year 2023 (to be paid by the City by March 31, 2024) would be reduced by a percentage equal to the percentage of Real Property Taxes attributable to the fully leased building. If all three buildings comprising the Building Improvements become fully leased during the Term, then the City would not owe, and Developer waives the right to collect, any further Grant Payments, except for unpaid amounts owed by the City for years prior to the year full leasing occurred.

[TABLE ON NEXT PAGE]

| Year | Building Improvements Schedule | Percentage of Real Property Taxes Attributable to Building 1 eligible to be Refunded | Percentage of Real Property Taxes Attributable to Building 2 eligible to be Refunded | Percentage of Real Property Taxes Attributable to Building 3 eligible to be Refunded | Total Grant Payment Earned                               |
|------|--------------------------------|--|--|--|--|
| 2020 | Start Improvements             | None   | None   | None   | None   |
| 2021 | Complete Improvements          | None   | None   | None   | None   |
| 2022 | N/A                            | 100% if not fully leased<br>0% if fully leased                                       | 100% if not fully leased<br>0% if fully leased                                       | 100% if not fully leased<br>0% if fully leased                                       | Sum of eligible refunds for buildings 1-3 (Paid in 2023) |
| 2023 | N/A                            | 75% if not fully leased<br>0% if fully leased  | 75% if not fully Leased<br>0% if Fully Leased  | 75% if not fully leased<br>0% if fully leased  | Sum of eligible refunds for buildings 1-3 (Paid in 2024) |
| 2024 | N/A                            | 50% if not fully leased<br>0% if fully Leased  | 50% if not fully leased<br>0% if fully leased  | 50% if not fully leased<br>0% if fully leased  | Sum of eligible refunds for buildings 1-3 (Paid in 2025) |

**ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

As of the Effective Date, the Developer represents and warrants to the City, as follows:

**Section 5.01. Organization.** The Developer is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Texas and authorized to conduct business in the State of Texas. The obligations of Developer under this Agreement may lawfully be conducted by the Developer.

**Section 5.02. Authority.** The execution, delivery and performance by the Developer of this Agreement are within the Developer’s powers and have been duly authorized by all necessary action of the Developer.

**Section 5.03. No Conflicts.** Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms

and provisions hereof will contravene the organizational documents of the Developer or, to Developer's actual knowledge, any provision of law, statute, rule or regulation to which the Developer is subject or any judgment, decree, license, order or permit applicable to the Developer, or will conflict or be inconsistent with, or will result in a material breach of any of the material terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of the Developer pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the Developer is a party or, to the knowledge of the Developer, by which the Developer is bound, or to which the Developer is subject.

**Section 5.04. No Consents.** No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution, delivery and performance by the delivery of this Agreement or the consummation of the transactions contemplated hereby or thereby.

**Section 5.05. Valid and Binding Obligation.** This Agreement is the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

**Section 5.06. No Pending Litigation.** There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the current actual knowledge of the Developer, threatened against or affecting the Developer or any subsidiaries of the Developer, questioning the validity or any action taken or to be taken by the Developer in connection with the execution, delivery and performance

by the Developer of this Agreement or seeking to prohibit, restrain or enjoin the execution, delivery or performance by the Developer hereof, wherein an unfavorable decision, ruling or finding (i) would adversely affect the validity or enforceability of, or the authority or ability of the Developer to perform, its obligations under this Agreement or (ii) would have a material adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

**Section 5.07. No Defaults.** The Developer is current in its obligation to pay taxes to the City, and is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which the Developer is a party or by which the Developer or any of its property is bound that would have any material adverse effect on the Developer's ability to perform under this Agreement.

**Section 5.08. Full Disclosure.** Neither this Agreement nor any schedule or exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

## **ARTICLE VI PERSONAL LIABILITY OF PUBLIC OFFICIALS; LIMITATIONS ON CITY OBLIGATIONS**

**Section 6.01. Personal Liability of Public Officials.** No employee or elected official of the City shall be personally responsible for any liability arising under or growing out of this Agreement.

**Section 6.02. Limitations on City Obligations.** The Grant Payments made and any other

financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each year during the Term by the City as provided in this Agreement. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant Payments or other payments unless the City budgets and appropriates funds to make such payments during the City's fiscal year in which such Grant Payment(s) or other payments are payable under this Agreement.

**Section 6.03. No Recourse.** Developer shall have no recourse against the City for failing to budget and appropriate funds during any fiscal year to meet the purposes and obligations under this Agreement.

## **ARTICLE VII INFORMATION**

**Section 7.01 . Information.** The Developer shall, at such times and in such form as City may reasonably request from the Developer, provide information concerning the performance of the Developer's obligations under this Agreement.

**Section 7.02. Certification.** Upon completion of the Building Improvements and before the City shall make the first Grant Payment due under this Agreement, Developer shall submit to the City a certified statement in a form acceptable to the City, signed by an authorized officer or employee of the Developer, providing the following information:

- a.** a description of the completed Building Improvements, together with a copy of the final certificate of occupancy issued for the Building Improvements;
- b.** invoices and related documentation verifying the capital investment incurred by Developer to construct the Building Improvements;

- c. copies of paid invoices from the Tax Office showing the amount of Real Property Taxes paid for the preceding tax year;
- d. a statement regarding whether any or all of the Building Improvements are fully leased
- e. a statement that Developer is in full compliance with its obligations under this Agreement.

Upon receipt of any such form, the City may notify the Developer in writing of any questions that the City may have with any of the information provided by the Developer, and the Developer shall diligently work in good faith to respond to such questions to the City's reasonable satisfaction.

**Section 7.03. Review of Developer Records.** The Developer agrees that the City will have the right to review the business records of the Developer as reasonably necessary, that relate to Developer's compliance with the terms of this Agreement at any reasonable time and upon at least seven days' prior notice to the Developer in order to determine compliance with this Agreement. To the extent reasonably possible, the Developer shall make all such records available in electronic form or otherwise available to be accessed through the internet.

## **ARTICLE VIII DEFAULT, TERMINATION AND REMEDIES**

**Section 8.01. Default and Termination.** If the Developer is not in compliance with this Agreement, the City may, in its sole discretion, withhold Grant Payments that would otherwise be due to Developer for the year during which the noncompliance occurred or terminate the Agreement by providing written notice thereof to Developer. If the City elects to withhold Grant Payments, the City may, in its sole discretion, resume Grant Payments for any subsequent years during the Term in which the Developer is complying with this Agreement; however, any Grant Payments withheld by the City for any years during which Developer is not complying shall be

deemed forfeited by the Developer and the City shall not be liable for later payment of such Grant Payments.

**Section 8.02. Developer's Option to Terminate.** If the City fails to budget and appropriate funds for Grant Payments under this Agreement for reasons other than the Developer's non-compliance with this Agreement during any fiscal year of the City during the Term, the Developer, at its option, may terminate this Agreement by providing written notice thereof to the City. If the Developer elects to terminate the Agreement under this Section, the Developer and the City shall each be released of all further obligations under this Agreement, except that the City shall pay to the Developer any outstanding and unpaid Grant Payments properly due to the Developer prior to the date of termination for which the City has budgeted and appropriated funds during any previous fiscal year.

**Section 8.03. Remedies.** Upon breach of any obligation or misrepresentation of facts under this Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach or misrepresentation, the aggrieved party shall have such remedies as are available in law or equity for breach of contract; provided, however, that no party shall be liable to any other party for incidental or consequential damages. Notwithstanding the foregoing, the City, in entering into this Agreement does not waive its immunity from suit or any other limitations on its liability, contractual or otherwise, as granted by the Texas Constitution or applicable laws of the State of Texas. If any Grant Payments are made by the City before the City determines that Developer has breached the terms of this Agreement or misrepresented any facts relied upon by the City, Developer acknowledges and agrees that among the remedies available to the City is the right to recover any sums paid to Developer and Developer agrees that, in such event, it shall be liable to the City for reimbursement of any such sums.

**Section 8.04. Offset.** The City may deduct from any Grant Payments, as an offset, any delinquent and unpaid fees, sums of money or ad valorem, sales or other taxes assessed and owed to or for the benefit of the City.

**Section 8.05. Force Majeure.** Means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

**Section 8.06. Indemnification.** Developer hereby agrees to indemnify and hold the City, and the City's elected officials and employees, harmless from and against any indebtedness, loss, claim, demand, liability or lawsuit arising from any obligation under this Agreement or breach of any representation, warranty, covenant or agreement of the Developer contained in this Agreement, without regard to any notice or cure provisions. The Developer's indemnification obligation hereunder shall include payment of the City's attorneys' fees, costs and expenses with respect thereto.

## **ARTICLE IX MISCELLANEOUS**

**Section 9.01. Entire Agreement.** This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

**Section 9.02. Further Actions.** The City and the Developer will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, provided that the

City shall not be required to spend any money or have further obligations other than to reimburse the Developer pursuant to the terms of this Agreement.

**Section 9.03. Amendments.** This Agreement may only be amended, altered, or terminated by written instrument signed by all parties.

**Section 9.04. Assignment.** Developer may not assign any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the City.

**Section 9.05. Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

**Section 9.06. Notices.** Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, reputable overnight carrier, or email, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other Party:

**Developer:** Bearden Management/Bearden Investments  
223 Hull Lane  
Sugarland, TX 77498  
Attn: Bill Hall  
Telephone: 281.568.4185  
E-mail: *billh@beardeninvestments.com*

**City:** City of San Marcos  
630 E. Hopkins  
San Marcos, Texas 78666  
Attn: City Manager  
Telephone: 512.393.8101  
E-mail: *citymanagerinfo@sanmarcostx.gov*

**Section 9.07. Applicable Law; Venue for Disputes; Attorney Fees.** This Agreement is

made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any dispute or legal proceedings arising under this Agreement shall lie in state courts having jurisdiction located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas, Austin Division. The prevailing party in any litigation arising under this Agreement shall be entitled to reimbursement of costs of litigation, including reasonable attorney fees and costs.

**Section 9.08. Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceability under the applicable present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**Section 9.09. Third Parties.** The City and the Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and the Developer or permitted assignees of the City and Developer, except that the indemnification and hold harmless obligations by the Developer provided for in this Agreement shall inure to the benefit of the indemnitees named therein.

**Section 9.10. No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way

assume any of the liability of the other for acts of the other or obligations of the other.

**Section 9.11. Prohibition on Contracts with Companies Boycotting Israel.** Pursuant to Chapters 2270 and 808 of the Texas Government Code, Developer certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.

**Section 9.12. Section 2252 Compliance.** Section 2252 of the Texas Government Code restricts the City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Developer hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

**Section 9.13. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

**EXECUTED** in duplicate originals to be effective as of the Effective Date.

**CITY:**

By: \_\_\_\_\_  
Bert Lumbreras, City Manager

**DEVELOPER:**

**By: DBearden Investments-GP, LLC, its General Partner**

By: \_\_\_\_\_

Name: \_\_\_\_\_

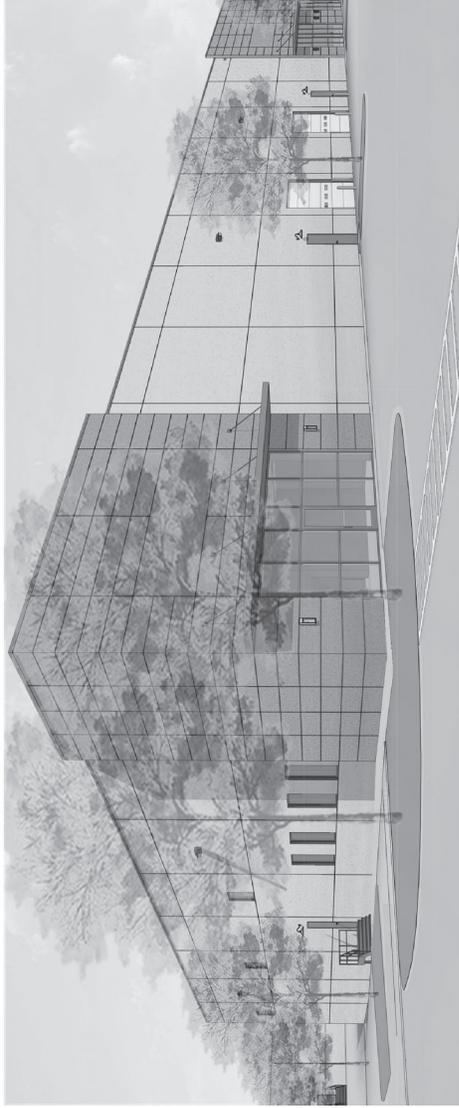
Title: \_\_\_\_\_

**EXHIBIT "A"**  
Building Specifications

**EXHIBIT "B"**  
Location Map, Plat or Survey of the Land



100% CONSTRUCTION DOCUMENTS



project number  
06.07.19

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A1.0

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BEATTY PALMER ARCHITECTS



BEARDEN  
INVESTMENTS  
CLOVIS BARKER  
WAREHOUSE DEVELOPMENT  
1551 CLOVIS BARKER ROAD  
SAN MARCOS, TEXAS 78666

**GENERAL NOTES**

- A. SITE INFORMATION INCLUDING REQUIREMENTS FOR NEW CONSTRUCTION CONDITIONS IS INDICATED IN ALL APPROPRIATE AREAS. ALL CONSTRUCTION AND MEP DOCUMENTS, CAREFULLY COORDINATE ALL CONSTRUCTION CONDITIONS AND CONFLICTS.
- B. ALL NEW SURFVALS ARE TO COMPLY WITH THE SLOPE REQUIREMENTS OF THE SAN MARCOS FIRE DEPARTMENT. ALL NEW SURFVALS SHALL BE TO COMPLY WITH THE SLOPE REQUIREMENTS OF THE SAN MARCOS FIRE DEPARTMENT. ALL NEW SURFVALS SHALL BE TO COMPLY WITH THE SLOPE REQUIREMENTS OF THE SAN MARCOS FIRE DEPARTMENT. ALL NEW SURFVALS SHALL BE TO COMPLY WITH THE SLOPE REQUIREMENTS OF THE SAN MARCOS FIRE DEPARTMENT.
- C. EXISTING AND NEW GRADING INFORMATION IS INDICATED IN ALL APPROPRIATE AREAS. ALL CONSTRUCTION AND MEP DOCUMENTS, CAREFULLY COORDINATE ALL CONSTRUCTION CONDITIONS AND CONFLICTS.
- D. REFER TO CIVIL DRAWINGS FOR PAVEMENT JOINT REQUIREMENTS.

**NOTE:** The San Marcos Fire Department recently conducted a fire hydrant survey. The hydrant locations are shown on the site plan. The hydrant locations are shown on the site plan. The hydrant locations are shown on the site plan.

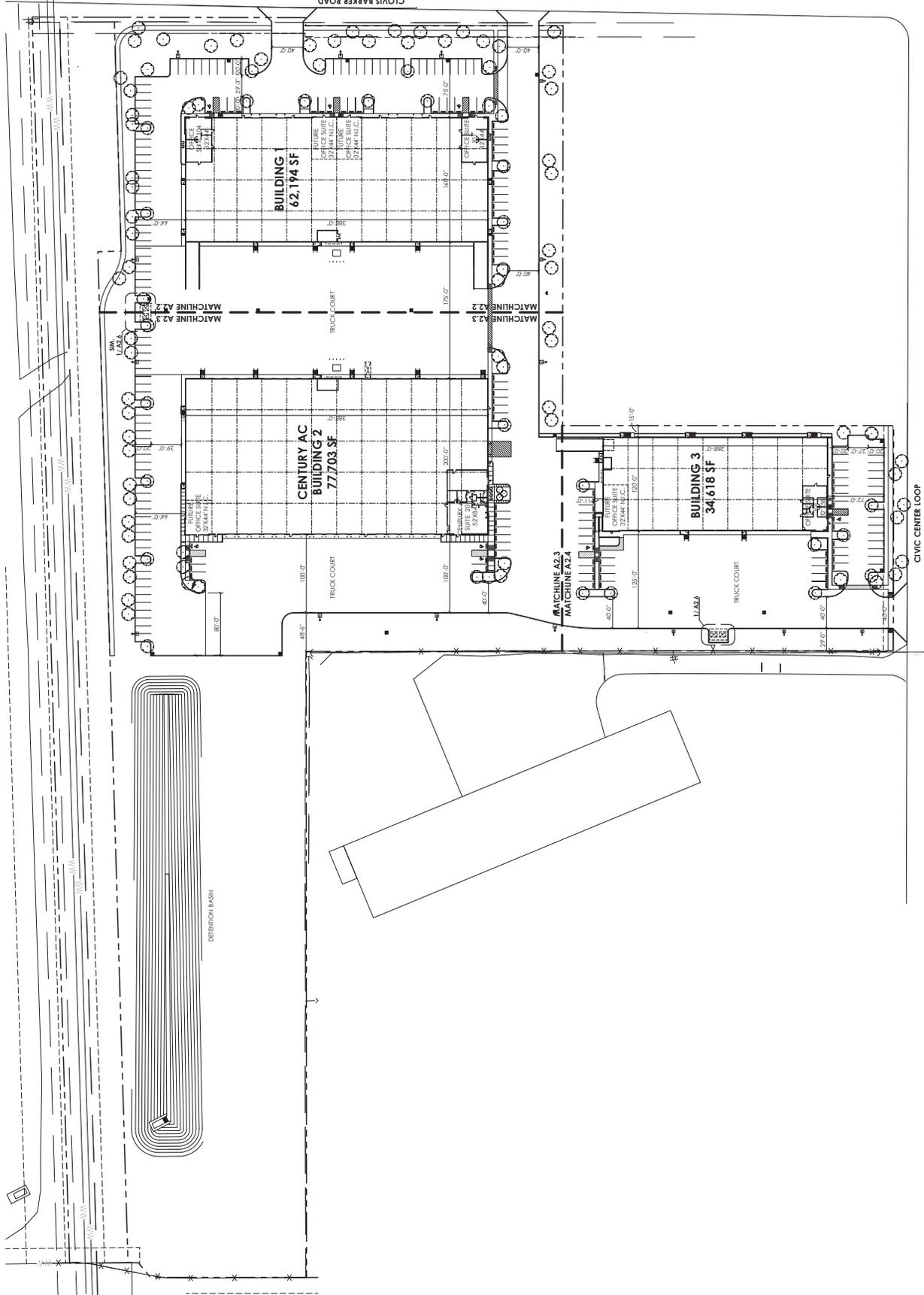


**CLOVIS BARKER WAREHOUSE DEVELOPMENT**  
 1551 CLOVIS BARKER ROAD  
 SAN MARCOS, TEXAS 78666

**BEARDEN INVESTMENTS**  
 project number: 06.07.19  
 date: 06.07.19  
 drawn by: CWI  
 checked by: CWI  
 sheet number: A2.1

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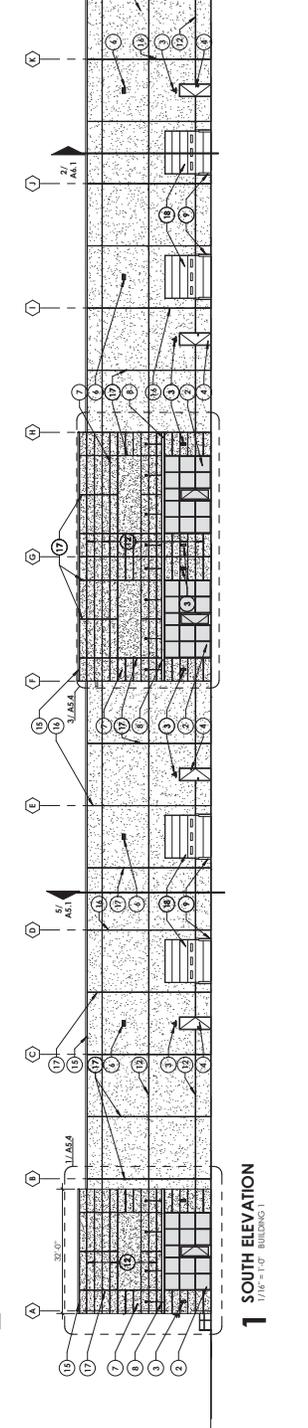
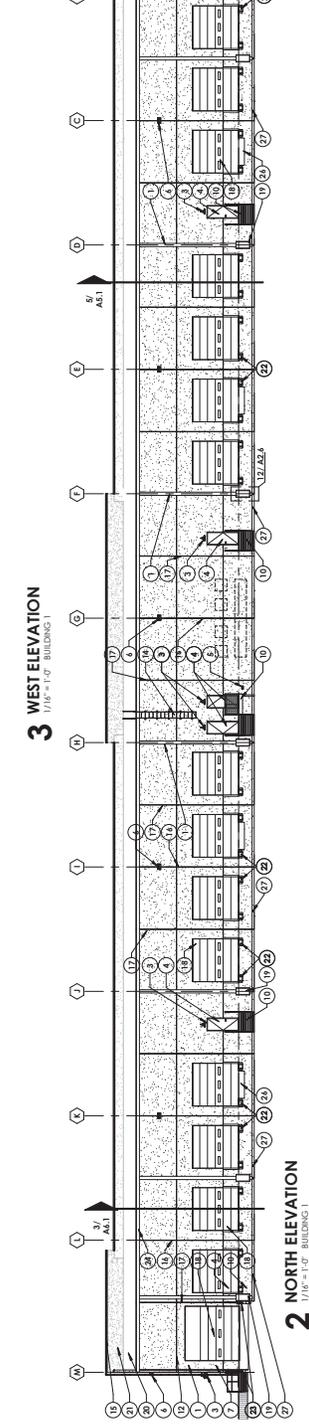
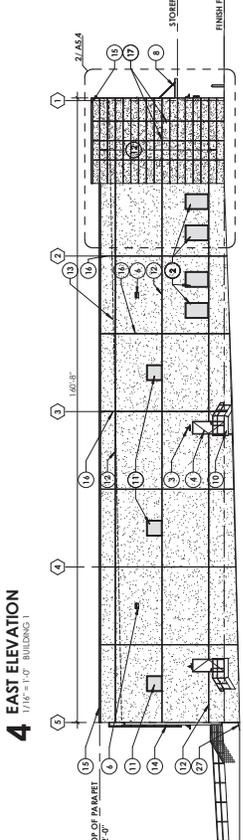
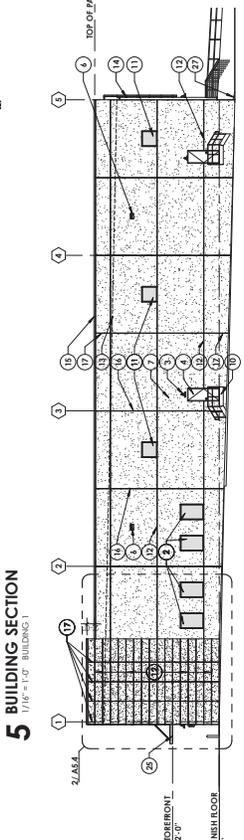
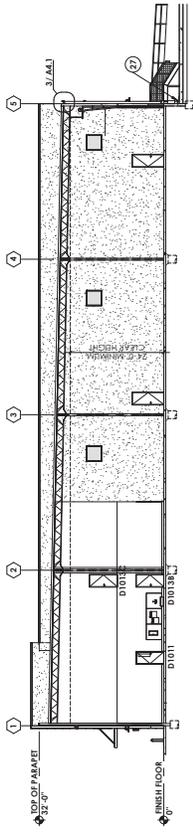
**BEATTY PALMER ARCHITECTS**



**1 OVERALL SITE PLAN**  
 Scale: 1" = 60'-0"

**KEYNOTES**

1. FINISHED METAL DOWNSPOUT / TYPICAL
2. STOREFRONT SYSTEM WITH 1" GLAZING
3. ELECTRICAL
4. PAINTED HOLLOW METAL DOOR & FRAME / REFER TO SPECIFICATIONS
5. PRE-ENGINEERED CONNECTION / REFER TO AWP SPECIFICATIONS
6. WALL MOUNTED LED WALL PACK / TYPICAL
7. PRE-ENGINEERED ALUMINUM CANOPY ABOVE BY APPROVED EQUAL / ANCHORED TO CONCRETE
8. STEEL W/ALUMINUM FINISH / 2" EACH GRADE LEVEL OVERHEAD DOOR
9. STEEL STAYS WITH STEEL W/ALUMINUM FINISH TO SUPPORT OVERHEAD DOOR
10. DETERMINE EXACT NUMBER OF RISERS REQUIRED / 4" ALUMINUM & GLASS STOREFRONT SYSTEM WITH 1/2" GLAZING
11. HORIZONTAL REVEAL IN CONCRETE TELL WALL PANEL
12. OSHA COMPLIANT TIED WALL LADDER WITH PERSONAL SAFETY SYSTEM AND PARAMETER TIE-IN LADDER
13. FINISHED METAL COPING / REFER TO DETAILS
14. VERTICAL LIFT OVERHEAD SECTIONAL DOOR / REFER TO SPECIFICATIONS
15. STEEL DOWNSPOUT BUMPER GUARD / TYPICAL
16. PARAPET FLEETING
17. CONCRETE RAMP WITH 20% AS/1/2 GALVANIZED
18. PRE-ENGINEERED ALUMINUM CANOPY ABOVE BY ALUMINUM TECHNIQUES PER #29 AWP/928 / OR RETIRED / TYPICAL
19. MANUALLY OPERATED 30K DOCK LIFTER
20. ALUMINUM / TYPICAL 8" TRUCK COURT DOORS



**CLOVIS BARKER**  
**WAREHOUSE**  
**DEVELOPMENT**  
1551 CLOVIS BARKER ROAD  
SAN MARCOS, TEXAS 78666

**BEARDEN INVESTMENTS**

drawn by: [Name]  
checked by: [Name]  
project number: [Number]  
date: 06.07.19

sheet number: [Number]  
sheet title: [Title]

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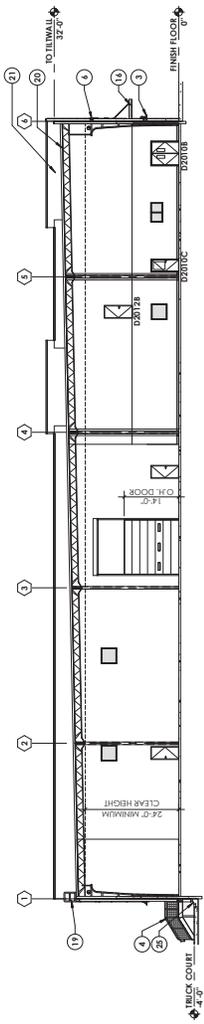
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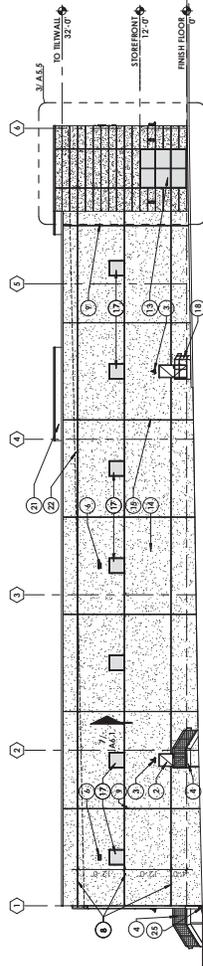
**BEATTY PALMER ARCHITECTS**

**KEYNOTES**

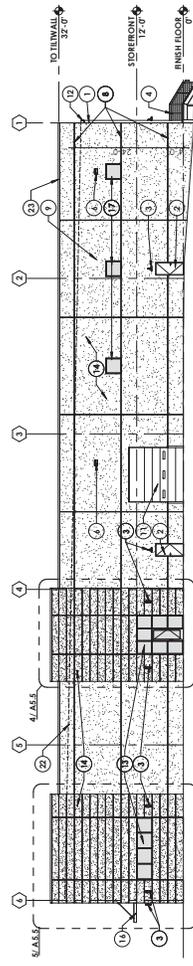
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- 2 FINISHED METAL DOWNSPOUT / TYPICAL
- 3 WALL MOUNTED LED LIGHT FIXTURE / REFER TO DETAILS / TYPICAL
- 4 STEEL STAIR WITH STEEL HANDRAILS / REFER TO SHEET DETAILS / CONTRACTOR SHALL VERIFY GRADES REQUIRED / 4" MINIMUM R.7 ALUMINUM REER HEIGHT
- 5 STEEL MOUNTED BULB TRIM GUARD / TYPICAL
- 6 WALL MOUNTED LED WALL PACK / TYPICAL
- 7 FIRE DEPARTMENT CONNECTION / REFER TO MEP
- 8 HORIZONTAL REVEAL IN CONCRETE INT WALL PANEL
- 9 1/2" R.5 IN CONCRETE PANEL
- 10 DOCK LAMPREY / 2" OVERHEAD DOOR / TYPICAL
- 11 1/2" R.5 IN CONCRETE PANEL / REFER TO DETAILS
- 12 CONTINUOUS GUTTER
- 13 STOREROOM SYSTEM WITH 1" GRADING
- 14 FINISH FLOOR / REFER TO DETAILS / FINISH FLOOR / REFER TO DETAILS / ARCHITECT
- 15 PRE-ENGINEERED ALUMINUM CONCRETE PANEL
- 16 ALUMINUM TECHNIQUES PM FBI APPROVAL / OR TYPICAL / TYPICAL
- 17 ALUMINUM & GLASS STOREROOM SYSTEM WITH STEEL STAIR WITH 3/4" HIGH 1 1/4" SQUARE GALVANIZED RAILS / CONTRACTOR SHALL VERIFY GRADES REQUIRED / 4" MINIMUM R.7 ALUMINUM REER
- 18 OSHA COMPLIANT FIXED WALL LADDER WITH PERSONAL FALL ARREST SYSTEM AND PARAFET EACH SIDE OF LADDER
- 19 TPO ROOF SYSTEM
- 20 PARAPET BEYOND
- 21 FINISHED METAL CORNING / REFER TO DETAILS
- 22 MANUALLY OPERATED TRUCK DOOR LEVER
- 23 FINISHED METAL CORNING / REFER TO DETAILS
- 24 MANUALLY OPERATED TRUCK DOOR LEVER
- 25 CONCRETE DOCK DOORS



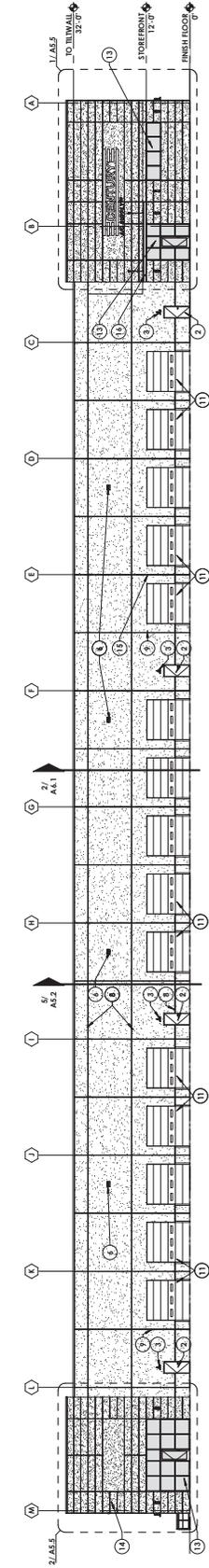
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1/8" = 1'-0" BUILDING 2



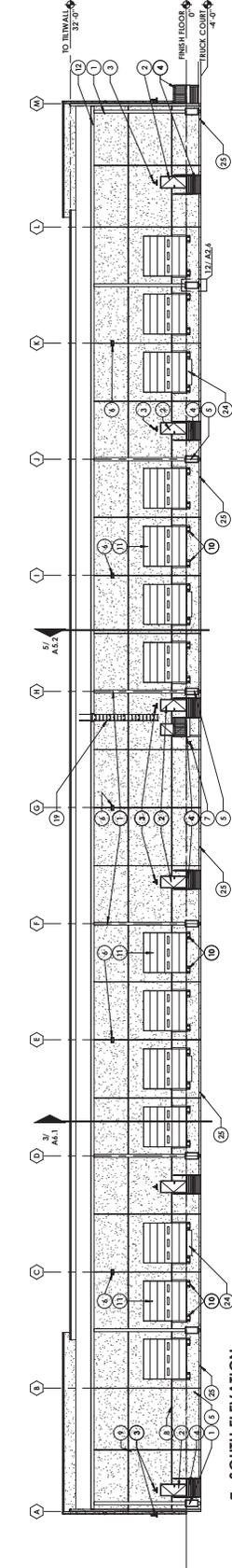
**4 EAST ELEVATION**  
1/8" = 1'-0" BUILDING 2



**3 WEST ELEVATION**  
1/8" = 1'-0" BUILDING 2



**2 NORTH ELEVATION**  
1/8" = 1'-0" BUILDING 2



**1 SOUTH ELEVATION**  
1/8" = 1'-0" BUILDING 2

architect



**CLOVIS BARKER**  
**WAREHOUSE**  
**DEVELOPMENT**  
1551 CLOVIS BARKER ROAD  
SAN MARCOS, TEXAS 78666



drawn by  
checked by  
date

project number  
sheet number  
date

**A5.2**

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VICTOR, TEXAS 78205  
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BEATTY PALMER ARCHITECTS

**KEYNOTES**

- 1 PREFINISHED METAL DOWNSPOUT / TYPICAL
- 2 WORKING SYSTEM WITH 1" GROUNDING
- 3 ELECTRICAL CONDUIT LIGHT FIXTURE / REFER TO ELECTRICAL
- 4 FASTENING TO CONCRETE / REFER TO DETAIL
- 5 PARAPET BEYOND
- 6 REINFORCED CONCRETE TIL WALL PANEL / REFER TO DETAIL
- 7 PREFINISHED ALUMINUM CANOPY ABOVE PARAPET / REFER TO DETAIL
- 8 VERTICAL LIFT OVERHEAD SECTIONAL DOOR / REFER TO DETAILS
- 9 GALVANIZED STEEL GUARDWALL / REFER TO DETAIL
- 10 CONCRETE VERTICAL SURFACE WITH REBBERED FINISH
- 11 PRECAST METAL CORNING / REFER TO DETAILS
- 12 GALVANIZED STEEL GUARDWALL WITH HANDRAIL / REFER TO DETAILS
- 13 LAPPED CONCRETE TIL WALL PANEL JOINT
- 14 STEEL STAR WITH STEEL HANDRAILS / REFER TO DETAIL
- 15 REINFORCED CONCRETE TIL WALL PANEL JOINT
- 16 REINFORCED CONCRETE STAR / COORDINATE WITH CIVIL GRADING FOR REBER COBERT / 4"
- 17 DOCK BUMPER / 2" HUB OVERHEAD DOOR / TYPICAL
- 18 PERSONAL FALL ARREST SYSTEM AND PARAPET SYSTEM WITH ANCHOR TIE & AWAY FROM EACH SIDE OF DOOR
- 19 VERTICAL REVEAL IN CONCRETE PANEL
- 20 WALL MOUNTED LED WALL PACK / TYPICAL
- 21 CONTINUOUS GUTTER
- 22 VERTICAL JOINT IN CONCRETE PANEL
- 23 HORIZONTAL REVEAL IN CONCRETE TIL WALL PANEL
- 24 ALUMINUM & GLASS STORE FRONT SYSTEM WITH SPECIFICATIONS
- 25 GROUND ANCHOR CONNECTION / REFER TO SHOP SPECIFICATIONS
- 26 ROOF LINER BENEATH
- 27 GALVANIZED STEEL DOCK LEVELER
- 28 KAILS
- 29 24" X 6" FLOATED PAVEMENT / TYPICAL 8" TRUCK COURT DOORS

revisions

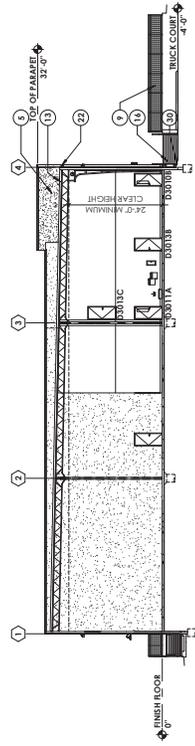


**CLOVIS BARKER WAREHOUSE DEVELOPMENT**  
 1551 CLOVIS BARKER ROAD  
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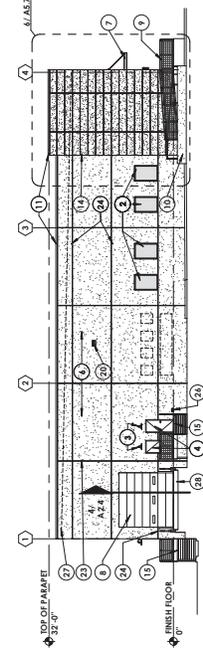
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 project number: 06.07.19  
 date: 06.07.19  
 drawn by: CWH  
 checked by: CWH  
 sheet number: A5.3

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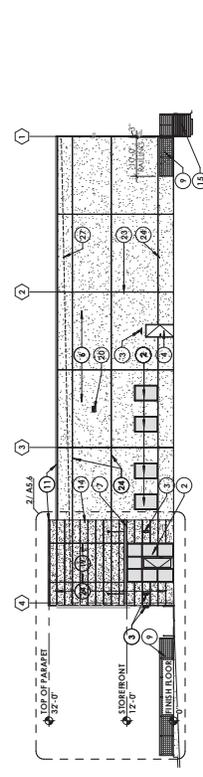
**BEATTY PALMER ARCHITECTS**



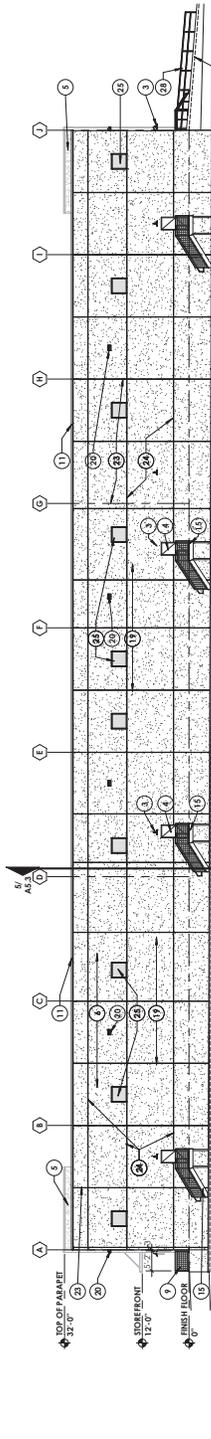
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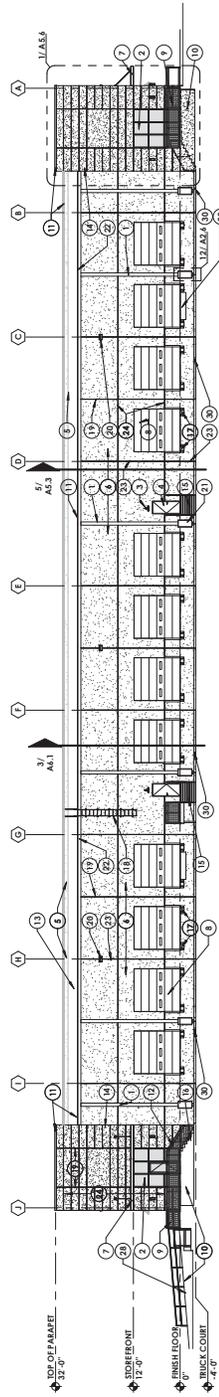
**4 EAST ELEVATION**  
 1/16" = 1'-0" BUILDING 3



**3 WEST ELEVATION**  
 1/16" = 1'-0" BUILDING 3



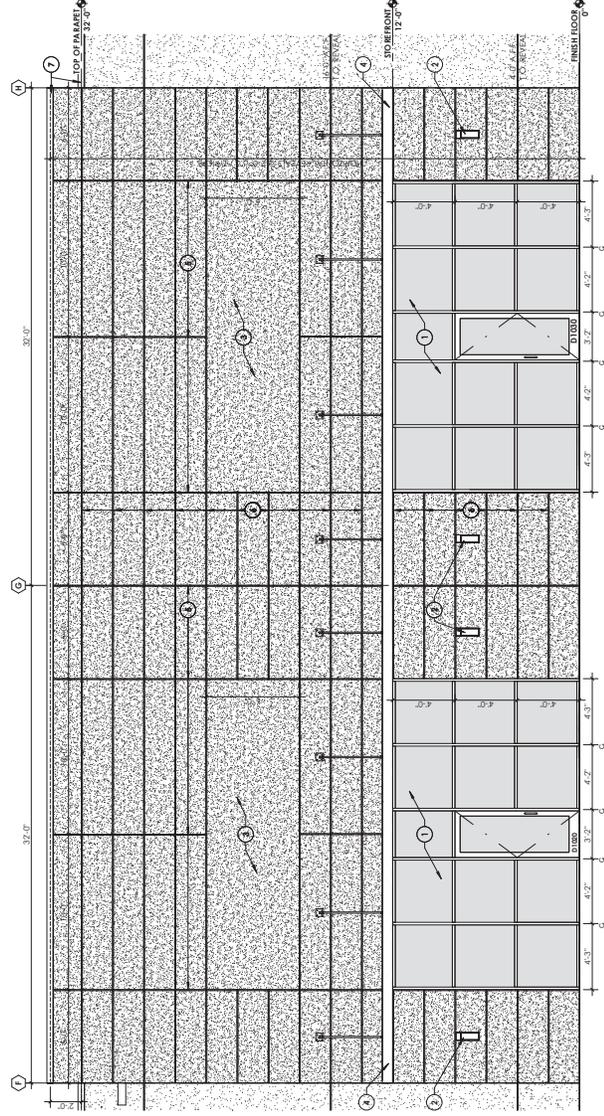
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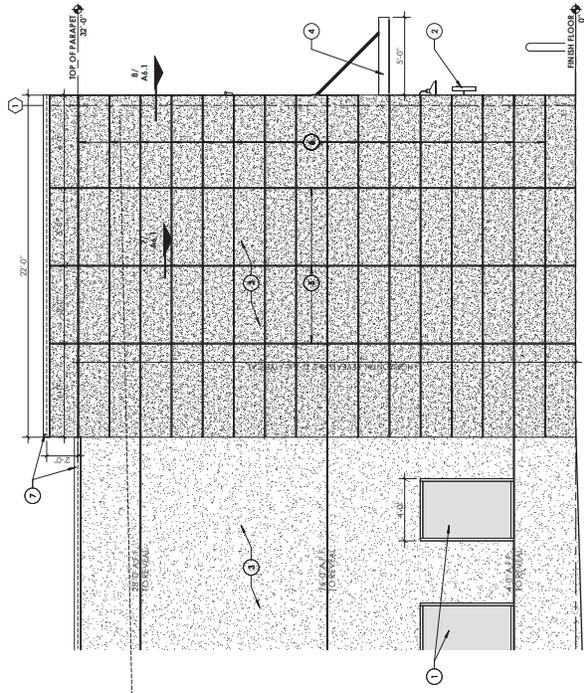
**1 NORTH ELEVATION**  
 1/16" = 1'-0" BUILDING 3

**KEYNOTES**

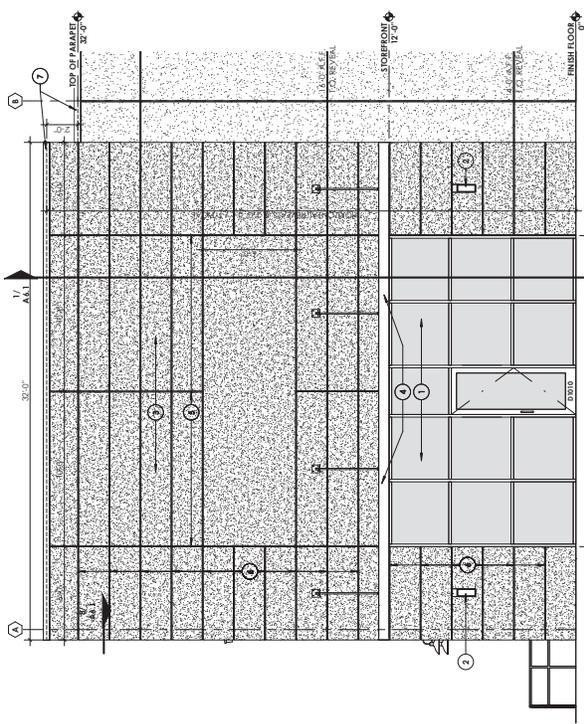
- 1 STOREFRONT SYSTEM WITH 1" GASKING
- 2 WALL MOUNTED LED LIGHT FIXTURE / REFER TO ELECTRICAL
- 3 REINFORCED CONCRETE INTWALL PANEL / TEXTURE AND PAINT COLORS AS SELECTED BY ARCHITECT
- 4 PREENGINEERED ALUMINUM CANOPY ABOVE OR AS APPROVED EQUAL / ANCHORED TO CONCRETE INTWALL / TYPICAL
- 5 VERTICAL REVEAL IN CONCRETE PANEL
- 6 HORIZONTAL REVEAL IN CONCRETE INTWALL PANEL
- 7 PREFINISHED METAL CORING / REFER TO DETAILS



**3 CENTER ENTRANCE**  
1/4 F = 1/4 F - BUILDING 1



**2 SOUTH WEST CORNER**  
1/4 F = 1/4 F - BUILDING 1



**1 SOUTH WEST ENTRANCE**  
1/4 F = 1/4 F - BUILDING 1

created revisions



**CLOVIS BARKER  
WAREHOUSE  
DEVELOPMENT**  
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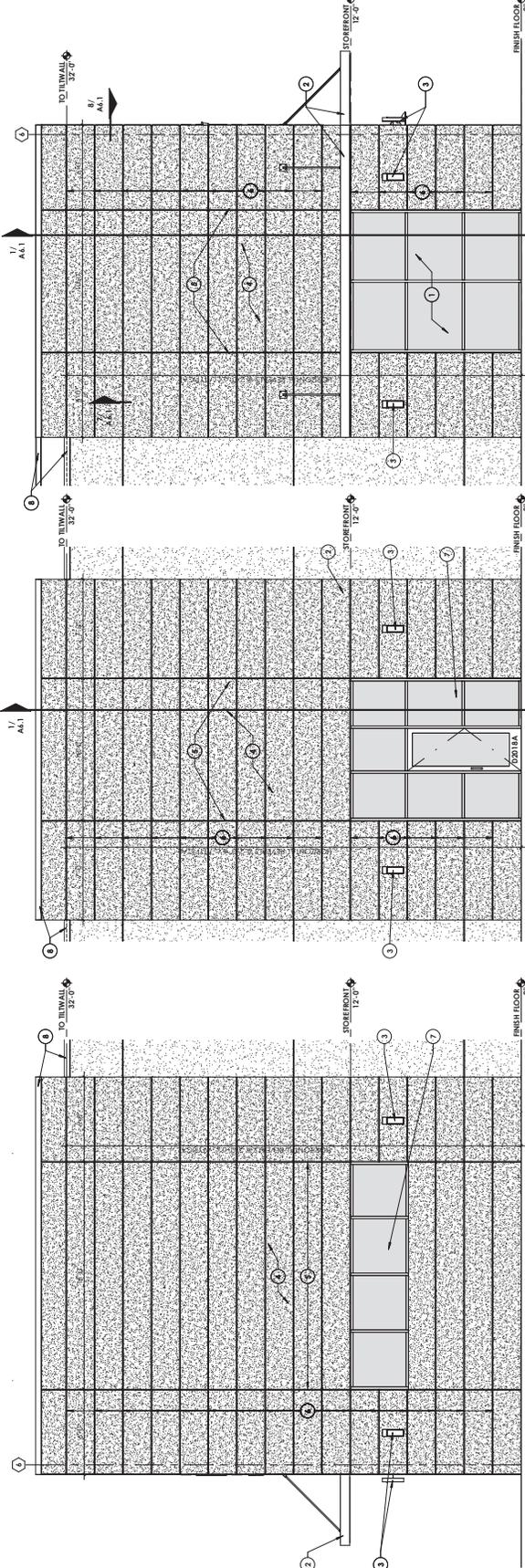
**BEARDEN INVESTMENTS**  
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checked by  
date  
sheet number  
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San Marcos, Texas 78005  
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www.beattyplmer.com

**A5.4**

**BEATTY PALMER ARCHITECTS**

**KEYNOTES**

1. ALUMINUM AND POLYESTER COINTEGRATED SYSTEM WITH 1" GAZING AS SPECIFIED
2. ALUMINUM AND POLYESTER COINTEGRATED SYSTEM WITH APPROVED TECHNIQUES WITH 1/2" AIR GAP AND 1/2" COINTEGRATED SYSTEM / ANCHORED TO CONCRETE TILT WALL / TYPICAL
3. WALL MOUNTED LED LIGHT FIXTURE / REFER TO ELECTRICAL
4. REINFORCED CONCRETE TILT WALL PANEL / AND PAINT COLORS AS SELECTED BY ARCHITECT
5. VERTICAL REVEAL IN CONCRETE PANEL
6. HORIZONTAL REVEAL IN CONCRETE TILT WALL PANEL
7. STOREFRONT SYSTEM WITH 1" GAZING
8. PREFINISHED METAL CORING / REFER TO DETAILS
9. VERTICAL JOINT IN CONCRETE PANEL

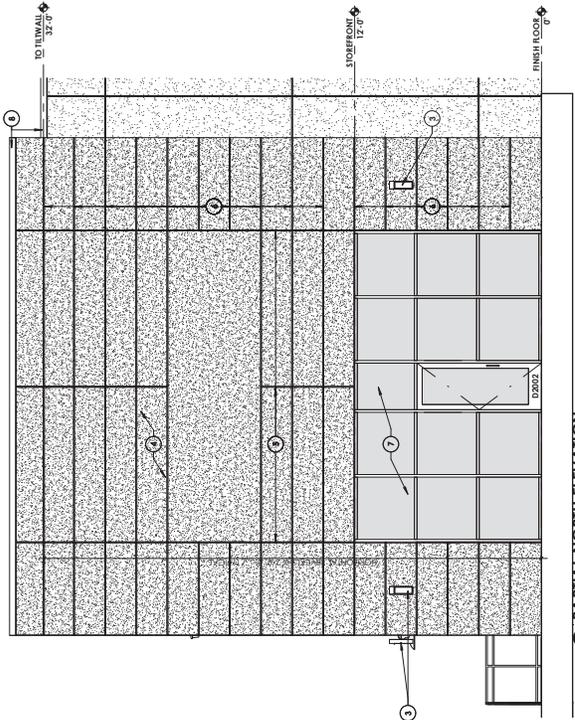


**5 PARTIAL WEST ELEVATION**  
1/4" = 1'-0" BUILDING 2 - NORTH WEST CORNER

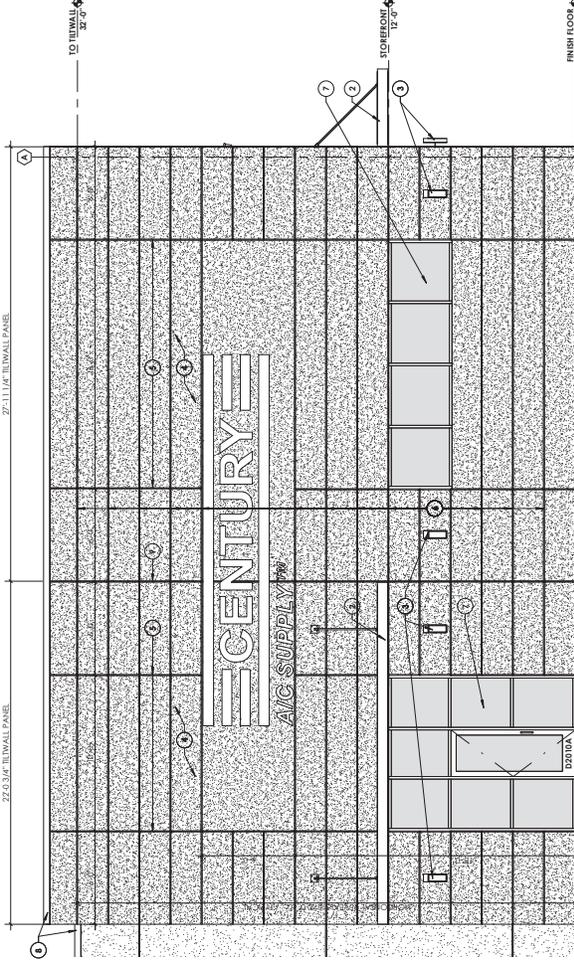
**4 PARTIAL WEST ELEVATION**  
1/4" = 1'-0" BUILDING 2 - WEST ENTRANCE

**3 PARTIAL EAST ELEVATION**  
1/4" = 1'-0" BUILDING 2 - NORTH EAST CORNER

**1 PARTIAL NORTH ELEVATION**  
1/4" = 1'-0" BUILDING 2 - NORTH WEST ENTRANCE



**2 PARTIAL NORTH ELEVATION**  
1/4" = 1'-0" BUILDING 2 - NORTH EAST ENTRANCE



**1 PARTIAL NORTH ELEVATION**  
1/4" = 1'-0" BUILDING 2 - NORTH WEST ENTRANCE

created revisions



**CLOVIS BARKER  
WAREHOUSE  
DEVELOPMENT**  
1551 CLOVIS BARKER ROAD  
SAN MARCOS, TEXAS 78666



drawn by  
project number  
date  
checked by  
CWH

sheet number  
Beatty Palmer Architects, Inc.  
500 ANTONIO ROAD #200  
SAN MARCOS, TEXAS 78605  
Voice: 210.218.8022  
www.beatypalmer.com

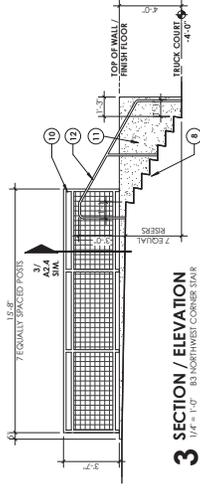
**A5.5**

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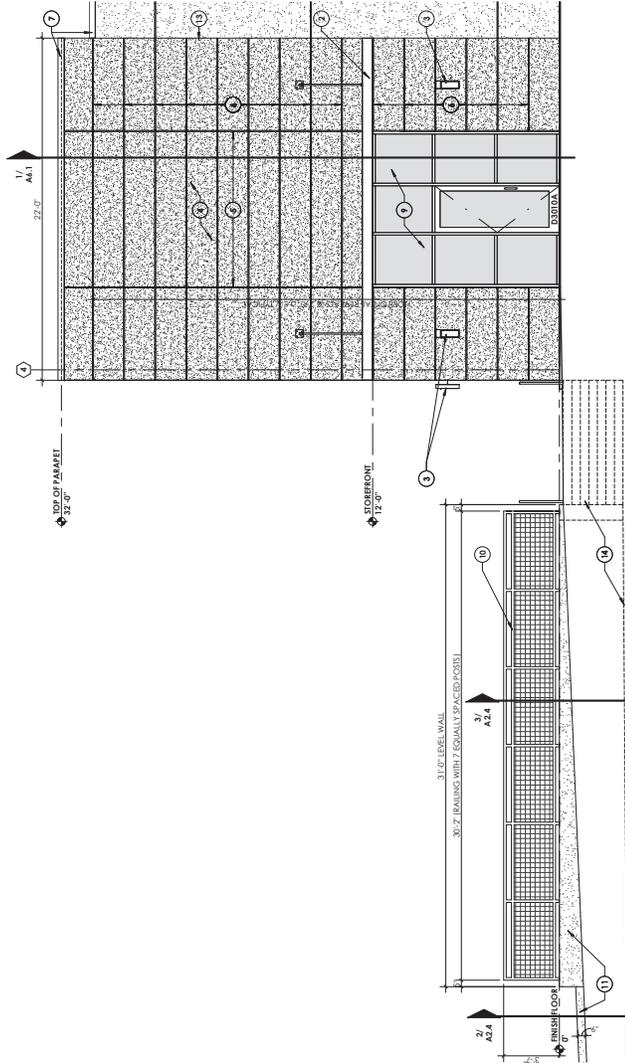
**BEATTY PALMER ARCHITECTS**

**KEYNOTES**

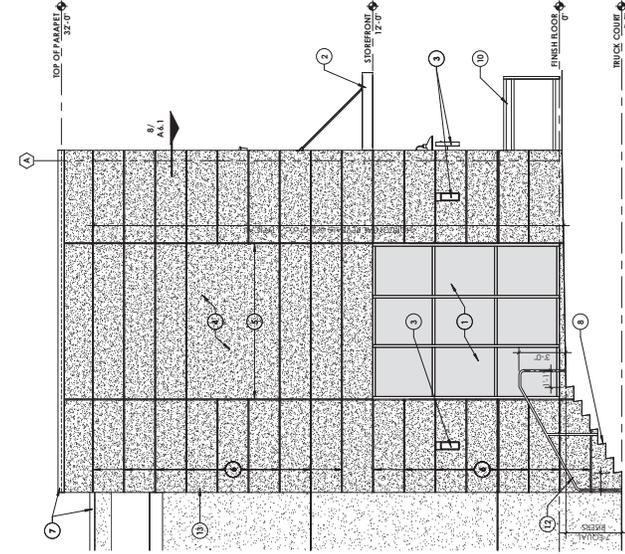
- 1 ALUMINUM AND GLASS STOREFRONT SYSTEM WITH 1" GLAZING AIR SPACES
- 2 PRE-ENGINEERED ALUMINUM CANOPY ABOVE BY APPROVED EQUAL / ANCHORED TO CONCRETE TILT WALL / TYPICAL
- 3 WALL MOUNTED LED LIGHT FIXTURE / REFER TO ELECTRICAL
- 4 REINFORCED CONCRETE TILT WALL PANEL / TEXTURE AND PAINT COLORS AS SELECTED BY ARCHITECT
- 5 VERTICAL REVEAL IN CONCRETE PANEL
- 6 HORIZONTAL REVEAL IN CONCRETE TILT WALL PANEL
- 7 PRE-FINISHED METAL COPING / REFER TO DETAILS
- 8 REINFORCED CONCRETE STAIR / COORDINATE WITH ARCHITECT'S STAIR / MINIMUM 8" MAXIMUM RISER HEIGHT
- 9 STOREFRONT SYSTEM WITH 1" GLAZING
- 10 GALVANIZED STEEL GUARDRAIL / REFER TO DETAILS
- 11 CONCRETE WALL/CURB WITH RUBBED FINISH ON VERTICAL SURFACE / PAINT TO MATCH BUILDING SURFACE
- 12 GALVANIZED STEEL PIPE HANDRAIL / REFER TO DETAILS
- 13 LAPPED CONCRETE TILT WALL PANEL JOINT
- 14 DASHED LINES INDICATE STAIR AND DOCK PAVING BEYOND



**3 SECTION / ELEVATION**  
1/4" = 1' 0" 83' NORTHWEST CORNER STAIR



**2 PARTIAL WEST ELEVATION**  
1/4" = 1' 0" BUILDING 3 NORTHWEST CORNER



**1 PARTIAL NORTH ELEVATION**  
1/4" = 1' 0" BUILDING 3 NORTHWEST CORNER

created revisions



**CLOVIS BARKER  
WAREHOUSE  
DEVELOPMENT**  
1551 CLOVIS BARKER ROAD  
SAN MARCOS, TEXAS 78666

**BEARDEN INVESTMENTS**

drawn by  
checked by  
date  
project number  
sheet number

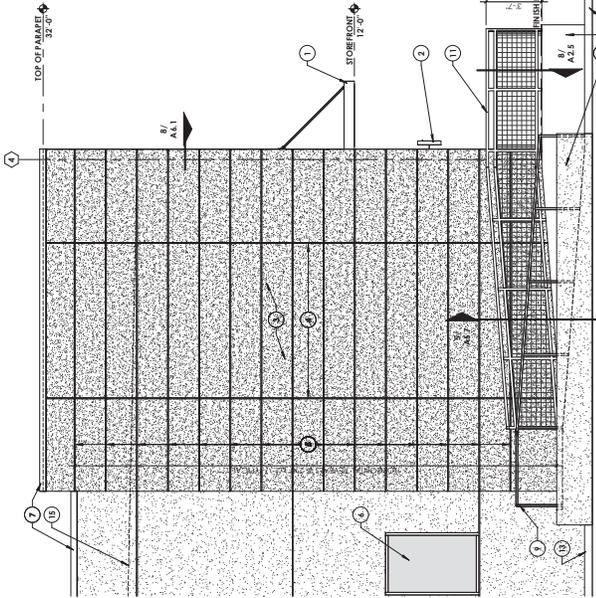
Beatty Palmer Architects, Inc.  
500 Anderson Road #200  
Vidor, TX 78222  
www.beatypalmer.com

**A5.6**

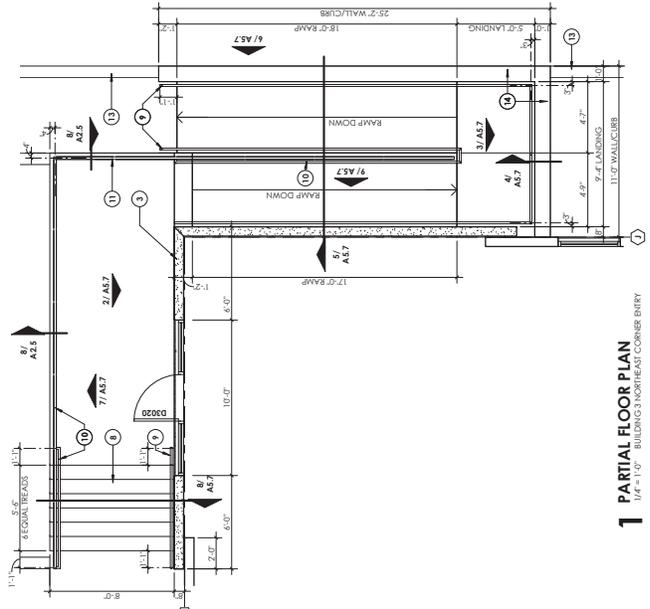
**BEATTY PALMER ARCHITECTS**

**KEYNOTES**

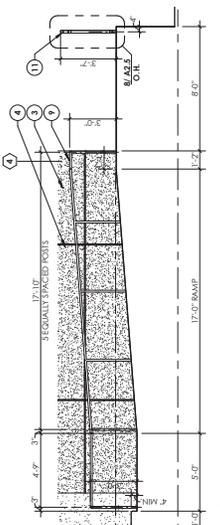
1. FINISHES TO MATCH EXISTING WORK BY AN APPROVED CONTRACTOR. APPROVED CONTRACTOR SHALL BE APPROVED BY THE ARCHITECT. APPROVED EQUIPMENT SHALL BE APPROVED EQUIPMENT. APPROVED EQUIPMENT SHALL BE APPROVED EQUIPMENT. APPROVED EQUIPMENT SHALL BE APPROVED EQUIPMENT.
2. WALL MOUNTED LIGHT FIXTURE / REFER TO ELECTRICAL
3. REINFORCED CONCRETE TIEWALL PANEL / REFER TO CONCRETE TIEWALL PANEL
4. HORIZONTAL REVEAL IN CONCRETE TIEWALL PANEL
5. STOREFRONT SYSTEM WITH 1" GLAZING
6. FRESHENED METAL COPING / REFER TO DETAILS
7. REINFORCED CONCRETE STAIR / COORDINATE WITH CIVIL GRADES FOR RIBS, COINTEGRATE ANCHORS & 7" MINIMUM RISE HEIGHT
8. GALVANIZED STEEL PIPE HANDRAIL / REFER TO DETAILS
9. GALVANIZED STEEL GUARDRAIL WITH HANDRAIL / REFER TO DETAILS
10. GALVANIZED STEEL GUARDRAIL / REFER TO DETAILS
11. CONCRETE VERTICAL SURFACE WITH RUBBED FINISH / PAINT
12. REINFORCED CONCRETE CURB / REFER TO CIVIL
13. CONCRETE WALL CURB WITH RUBBED FINISH ON EXTERIOR SURFACE / PAINT TO MATCH BUILDING EXTERIOR
14. ROOF LINE BEYOND



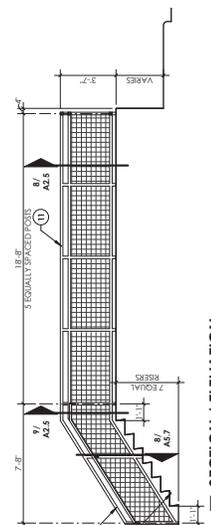
**6 PARTIAL EAST ELEVATION**  
1/4" = 1'-0" BUILDING 3 NORTHEAST CORNER



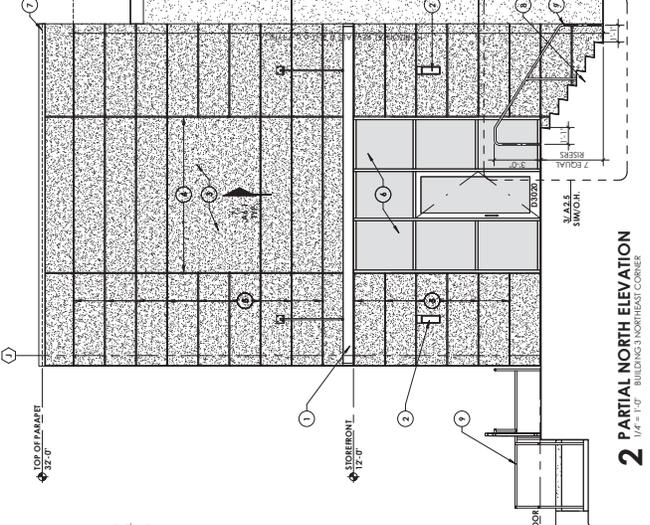
**1 PARTIAL FLOOR PLAN**  
1/4" = 1'-0" BUILDING 3 NORTHEAST CORNER RHY



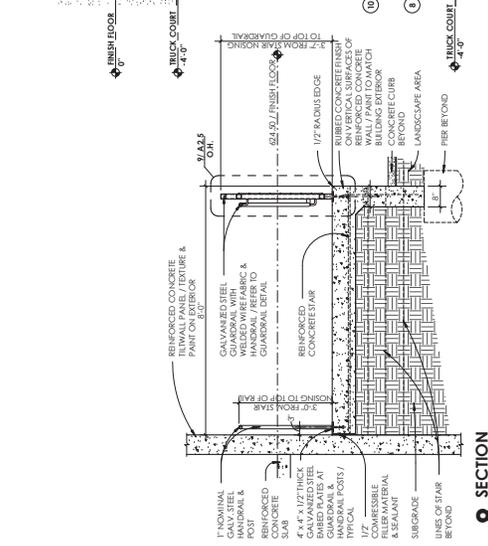
**9 SECTION / ELEVATION**  
1/4" = 1'-0" BUILDING 3 NORTHEAST CORNER RAMP



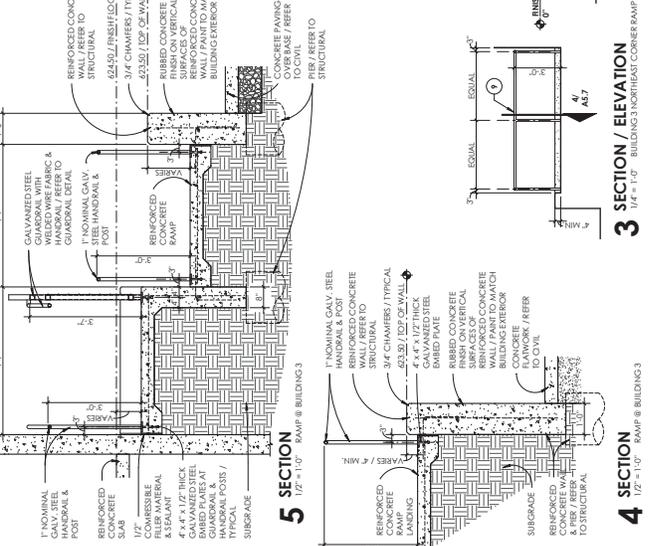
**7 SECTION / ELEVATION**  
1/4" = 1'-0" BUILDING 3 NORTHEAST CORNER STAIR



**2 PARTIAL NORTH ELEVATION**  
1/4" = 1'-0" BUILDING 3 NORTHEAST CORNER



**8 SECTION**  
1/2" = 1'-0" RAMP @ BUILDING 3



**3 SECTION / ELEVATION**  
1/4" = 1'-0" BUILDING 3 NORTHEAST CORNER RAMP



**5 SECTION**  
1/2" = 1'-0" RAMP @ BUILDING 3



**4 SECTION**  
1/2" = 1'-0" RAMP @ BUILDING 3

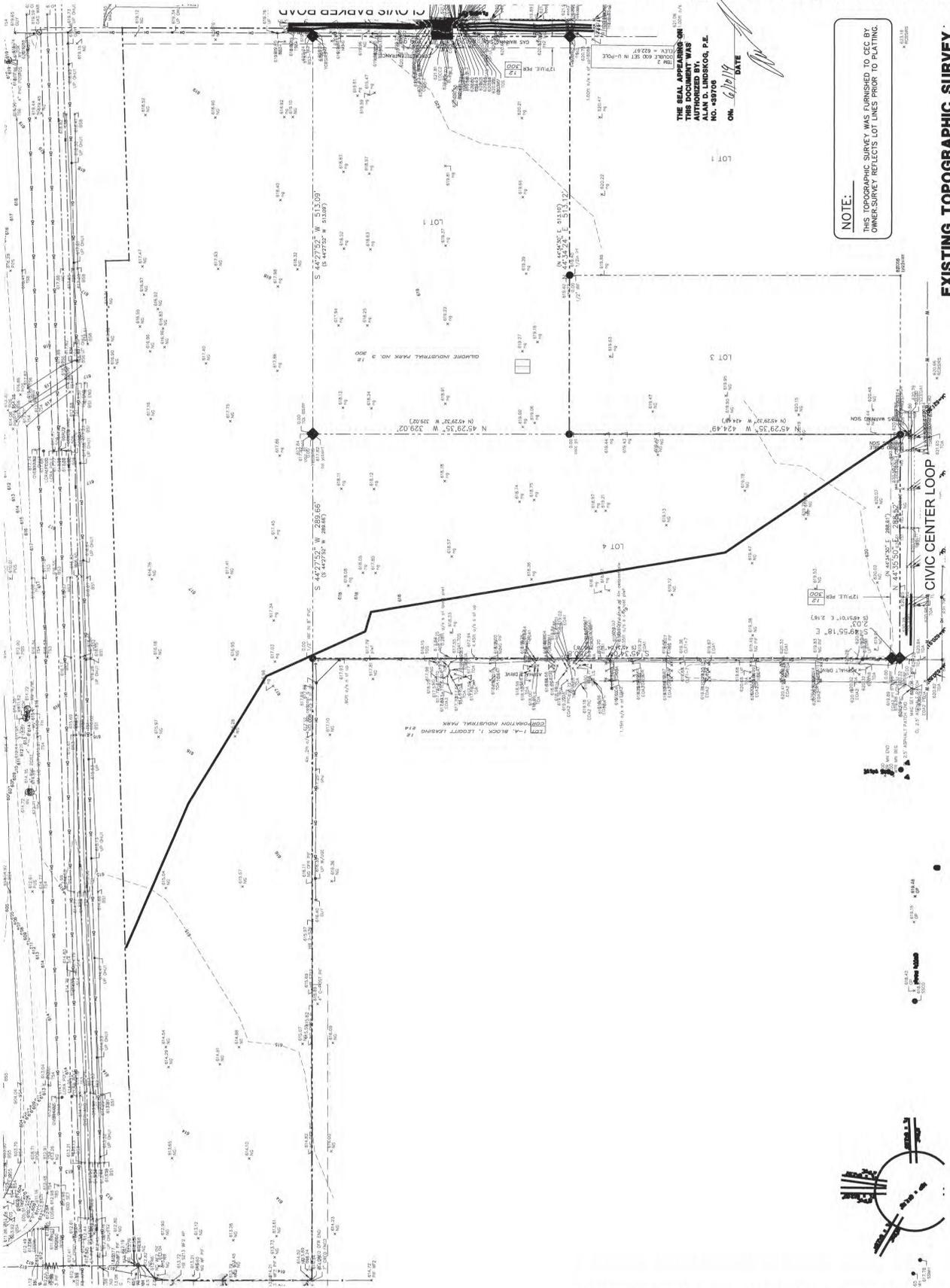
**CLOVIS BARKER WAREHOUSE DEVELOPMENT**  
1551 CLOVIS BARKER ROAD  
SAN MARCOS, TEXAS 78666

**BEARDEN INVESTMENTS**  
project number: 06.07.19  
date: 06.07.19  
drawn by: CWI  
checked by: CWI  
sheet number: A5.7  
Beatty Palmer Architects, Inc.  
500 Andrews Road #2005  
Voice: 210.218.8022  
www.beattyplm.com

**BEATTY PALMER ARCHITECTS**



SCALE  
1 inch = 50 ft



revisions  
JUNE 10, 2019  
engineer  
ALAN D. LINDRICK, P.E.  
project number  
1600  
drawn by  
C3H  
checked by  
C3H  
sheet number  
C0.2  
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THE SEAL APPEARING ON THIS DOCUMENT WAS ISSUED TO ME BY THE STATE OF TEXAS ON 6/10/19 DATE

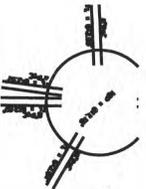
# CLOVIS BARKER WAREHOUSE DEVELOPMENT

2100 CLOVIS BARKER ROAD  
SAN MARCOS, TEXAS 78666

NOTE:  
THIS TOPOGRAPHIC SURVEY WAS FURNISHED TO CEC BY OWNER-SURVEY. REFLECTS LOT LINES PRIOR TO PLATTING.

## EXISTING TOPOGRAPHIC SURVEY

BEATTY PALMER ARCHITECTS



DATE: JUN 10, 2019, 8:08am User: D. Lindrick  
FILE: L:\2019\Projects\17018\2018\Clovis Barker Warehouse & 15000\201700\20.20 EXISTING TOPOGRAPHIC SURVEY.dwg



# Project Spec Overview

## ➤ Project

- Bearden Investments to construct three speculative shell buildings - 1551 Clovis Barker Rd.
- Lease to commercial, office, warehouse, and light industrial users
- Total square footage of 174,515; Building 1 – 62,194, Building 2 – 77,703, Building 3 – 34,618
- Projected construction timeline is November 2020 to October 2021

## ➤ Investment

- \$10,500,000 in real property





# Project Spec Incentive

## ➤ Incentive

- 3-year rebate of City real property tax
  - Year 1 – 100%
  - Year 2 – 75%
  - Year 3 – 50%
- Incentives reduced as buildings become leased - no incentive at 100% occupancy
- Developer received same incentive in 2013 but received no rebates because property leased
- Maximum rebate to developer is ~ \$147,000
- Minimum tax revenue to City is ~ \$50,000

## ➤ Benefits

- Developer investment, new or expanded space for employers, increases property tax base

**STAFF and ECONOMIC DEVELOPMENT SAN MARCOS  
RECOMMEND APPROVAL OF THIS INCENTIVE**

[sanmarcostx.gov](http://sanmarcostx.gov)



## Legislation Text

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**File #:** Ord. 2020-77, **Version:** 1

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**AGENDA CAPTION:**

Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-77, amending the Official Zoning Map of the City in Case No. ZC-20-12 by rezoning approximately 14.71 acres out of the J.W. Berry Survey, located near the 1500 block of N LBJ Drive (Steen Road) from "FD" Future Development District to "SF-6" Single Family District; including procedural provisions; and providing an effective date; and consider approval of Ordinance 2020-77, on the first of two readings.

**Meeting date:** October 20, 2020

**Department:** Planning & Development Services

**Amount & Source of Funding**

**Funds Required:** N/A

**Account Number:** N/A

**Funds Available:** N/A

**Account Name:** N/A

**Fiscal Note:**

**Prior Council Action:** [Click or tap here to enter text.](#)

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.

Core Services

Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

This property was annexed in 2015 as part of a City-initiated annexation. The property maintained the default zoning district of Future Development. The applicant has stated that their intention is to entitle the property to sell.

**Council Committee, Board/Commission Action:**

At their meeting on September 22, 2020, the Planning & Zoning Commission voted 9-0 to recommend **denial** of the request.

**Planning and Zoning Commission Meeting: September 22<sup>nd</sup>, 2020**

**Speakers in favor or opposed:** Mike Siefert spoke in favor of the request. Randall and Diane Osborne, Steven Aycok, George Gilbert, Dr. Jane Saunders, Mary Ann and Robert Moerke, Dan Caldwell, Lee Elliott Stern, Harold Stern, Diane Eure, Naomi Medina and Richard Medina spoke in opposition of the request.

**Recommendation from the Planning and Zoning Commission:**

Recommendation for denial 9-0.

According to Section 2.2.4.2 of the San Marcos Development Code, a **super majority vote from City Council** is needed when the Planning and Zoning Commission recommends denial of an application in order for the development application to become effective.

Commissioner Kelsey originally motioned for postponement of the agenda item to allow for the neighbors and the applicant to meet and discuss the intentions of the applicant and work to appease some of the complaints from residents. Many of the complaints were focused on issues involving traffic on LBJ, potential flooding and water mitigation issues, lot sizes and a loss of the natural environment. The applicant made a point of stating that he and Tory Carpenter has tried to hold a previous meeting with the community by had 0 attendance,

potentially due to lack of notification for property owners outside of the 400-foot radius as pointed out by the commission. The commissioners raised the question to the applicant of what were the potential lot sizes, the applicant said they were envisioning 50-foot lots for the site.

Commissioner McCarty brought to the attention of the commissioners that in the staff report, the intention of the applicant is to entitle the land to sell, not to develop. The applicant did state that they were only land developers, not home builders, and would only build road ways on the site before selling to a home builder. The motion to postpone was then withdrawn and the discussion for denial was opened, focusing on criteria for denial being the potential traffic issues, environmental impacts and the effects of students. Many of the commissioners spoke in opposition of the zoning change and recommended the case for denial.

**Alternatives:**

N/A

**Recommendation:**

Staff recommends **approval** of the request as submitted.

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY IN CASE NO. ZC-20-12 BY REZONING APPROXIMATELY 14.71 ACRES OF LAND OUT OF THE J.W. BERRY SURVEY, LOCATED NEAR THE 1500 BLOCK OF NORTH LBJ DRIVE (STEEN ROAD) FROM “FD” FUTURE DEVELOPMENT DISTRICT TO “SF-6” SINGLE FAMILY DISTRICT; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

1. On September 22, 2020, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to change the zoning designation from “FD” Future Development District to “SF-6” Single Family District for approximately 14.71 acres of land out of the J.W. Berry Survey, located near the 1500 block of North LBJ Drive (Steen Road).
2. The Planning and Zoning Commission approved a recommendation to the City Council regarding the request.
3. The City Council held a public hearing on October 20, 2020 regarding the request.
4. All requirements pertaining to Zoning Map amendments have been met.
5. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**SECTION 1.** The Official Zoning Map of the City is amended to rezone the tract of land described in Exhibit A, attached hereto and made a part hereof, from “FD” Future Development District to “SF-6” Single Family District.

**SECTION 2.** If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

**SECTION 3.** All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

**SECTION 4.** This ordinance will take effect after its passage, approval and adoption on second reading.

**PASSED AND APPROVED** on first reading on October 20, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on November 4, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney

**EXHIBIT A**

[LEGAL DESCRIPTION TO BE ATTACHED]

|                       |                   |
|-----------------------|-------------------|
| <b>Zoning Request</b> | <b>Steen Road</b> |
| <b>ZC-20-12</b>       |                   |



**Summary**

|                   |  |                        |  |
|-------------------|--|------------------------|--|
| <b>Request:</b>   | Zoning change from Future Development “FD,” to Single Family 6 “SF-6”                |                        |  |
| <b>Applicant:</b> | Mike Siefert<br>Lookout Partners, L.P.<br>1789 S Bagdad Rd #104<br>Leander, TX 78641 | <b>Property Owner:</b> | Lookout Partners, L.P.<br>1789 S Bagdad Rd #104<br>Leander, TX 78641 |

**Notification**

|                     |                                 |                              |                   |
|---------------------|---------------------------------|------------------------------|-------------------|
| <b>Application:</b> | August 26, 2020                 | <b>Neighborhood Meeting:</b> | August 31, 2020   |
| <b>Published:</b>   | September 6, 2020               | <b># of Participants</b>     | 0                 |
| <b>Posted:</b>      | September 4, 2020               | <b>Personal:</b>             | September 4, 2020 |
| <b>Response:</b>    | Opposition: 23<br>In support: 1 |                              |                   |

**Property Description**

|                              |  |  |                           |
|------------------------------|--|--|---------------------------|
| <b>Legal Description:</b>    | 14.71 acres out of the J.W. Berry Survey |  |                           |
| <b>Location:</b>             | Near N LBJ Drive and Steen Road          |  |                           |
| <b>Acreage:</b>              | 14.71 acres                              | <b>PDD/DA/Other:</b>                     | N/A                       |
| <b>Existing Zoning:</b>      | FD                                       | <b>Proposed Zoning:</b>                  | SF-6                      |
| <b>Existing Use:</b>         | Vacant                                   | <b>Proposed Use:</b>                     | Single Family Residential |
| <b>Existing Occupancy:</b>   | Restrictions Apply                       | <b>Occupancy:</b>                        | Restrictions Apply        |
| <b>Preferred Scenario:</b>   | Existing Neighborhood                    | <b>Proposed Designation:</b>             | Same                      |
| <b>CONA Neighborhood:</b>    | N/A                                      | <b>Sector:</b>                           | 3                         |
| <b>Utility Capacity:</b>     | By Developer                             | <b>Floodplain:</b>                       | No                        |
| <b>Historic Designation:</b> | N/A                                      | <b>My Historic SMTX Resources Survey</b> | No                        |

**Surrounding Area**

|                           | <b>Zoning</b> | <b>Existing Land Use</b> | <b>Preferred Scenario</b>             |
|---------------------------|---------------|--------------------------|---------------------------------------|
| <b>North of Property:</b> | ETJ           | Vacant                   | Low Intensity                         |
| <b>South of Property:</b> | SF-6          | Single Family            | Existing Neighborhood                 |
| <b>East of Property:</b>  | AR            | Single Family            | Existing Neighborhood /<br>Open Space |
| <b>West of Property:</b>  | SF-6          | Single Family            | Existing Neighborhood                 |

|                       |                   |
|-----------------------|-------------------|
| <b>Zoning Request</b> | <b>Steen Road</b> |
| <b>ZC-20-12</b>       |                   |



**Staff Recommendation**

|  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> <b>Approval as Submitted</b> | <input type="checkbox"/> <b>Alternate Approval</b> | <input type="checkbox"/> <b>Denial</b> |
| <b>Staff:</b> Tory Carpenter, AICP, CNUA-A                       | <b>Title :</b> Planner                             | <b>Date:</b> September 23, 2020        |

**Commission Recommendation**

|   |  |   |
|---|--|---|
| <input type="checkbox"/> <b>Approval as Submitted</b>   | <input type="checkbox"/> <b>Approval with Conditions / Alternate</b> | <input checked="" type="checkbox"/> <b>Denial</b> |
| <b>Speakers in favor or opposed</b>   |  |   |
| <p>In Favor:</p> <ol style="list-style-type: none"> <li>1. Mike Siefert</li> </ol> <p>Opposed.</p> <ol style="list-style-type: none"> <li>2. Randall and Diane Osborne</li> <li>3. Steven Aycok</li> <li>4. George Gilbert</li> <li>5. Jane Saunders</li> <li>6. Mary Ann and Robert Moerke</li> <li>7. Dan Caldwell</li> <li>8. Harold Stern</li> <li>9. Diane Eure</li> <li>10. Naomi Medina</li> <li>11. Richard Medina</li> </ol> |  |   |
| <b>Recommendation from the Planning and Zoning Commission Meeting held September 22, 2020:</b>  |  |   |
| A motion was proposed by Commissioner Kelsey, seconded by Commissioner Haverland to recommend denial of ZC-20-12. The motion passed 9-0.  |  |   |
| <b>For: 9</b>   |  |   |
| <b>Against: 0</b>   |  |   |
| <b>Absent: 0</b>  |  |   |

**History**

This property was annexed in 2015 as part of a City-initiated annexation. The property maintained the default zoning district of Future Development. The applicant has stated that their intention is to entitle the property to sell.

**Additional Analysis**

The development will take access from N LBJ Drive. To meet minimum block perimeter requirements, streets must extend through the site for future connections.

**Comments from Other Departments**

|                        |            |
|------------------------|------------|
| <b>Police</b>          | No Comment |
| <b>Fire</b>            | No Comment |
| <b>Public Services</b> | No Comment |
| <b>Engineering</b>     | No Comment |

|                |            |
|----------------|------------|
| Zoning Request | Steen Road |
| ZC-20-12       |            |



| Evaluation |              |            | Criteria for Approval (Sec.2.5.1.4)  |
|------------|--------------|------------|--|
| Consistent | Inconsistent | Neutral    |  |
| <u>X</u>   |              |            | Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan and preferred scenario map<br><b>SF-6 is a "Considered" zoning district per Table 4.1.</b>   |
|            |              | <u>N/A</u> | Whether the proposed zoning map amendment is consistent with any adopted small area plan or neighborhood character study for the area<br><b>Studies were not complete at the time of this request.</b>   |
|            |              | <u>N/A</u> | Whether the proposed zoning map amendment is consistent with any applicable development agreement in effect<br><b>There are no development agreements associated with this site.</b>   |
| <u>X</u>   |              |            | Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses shall be appropriate in the immediate area of the land to be reclassified<br><b>This use is consistent with surrounding development.</b>   |
| <u>X</u>   |              |            | Whether the proposed zoning will reinforce the existing or planned character of the area<br><b>The predominant surrounding zoning is also SF-6. This zoning change should reinforce the existing character of the area as it is consistent.</b>  |
| <u>X</u>   |              |            | Whether the site is appropriate for the development allowed in the proposed district<br><b>While there are significant slopes on less than 10% of the site, additional restrictions on impervious cover will apply in these areas.</b>   |
| <u>X</u>   |              |            | Whether there are substantial reasons why the property cannot be used according to the existing zoning<br><b>Since the property is currently zoned FD, it allows for two-acre single-family lots. These would be much larger than those of the surrounding area and would limit the ability to provide for a more compact development.</b> |
| <u>X</u>   |              |            | Whether there is a need for the proposed use at the proposed location<br><b>The rezoning would increase housing availability.</b>  |

|                |            |
|----------------|------------|
| Zoning Request | Steen Road |
| ZC-20-12       |            |

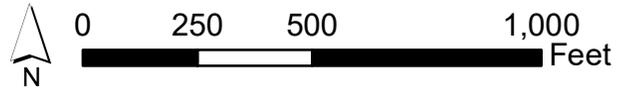


| Evaluation |              |            | Criteria for Approval (Sec.2.5.1.4)   |
|------------|--------------|------------|---|
| Consistent | Inconsistent | Neutral    |   |
| <u>X</u>   |              |            | <p>Whether the City and other service providers will be able to provide sufficient public facilities and services including schools, roads, recreation facilities, wastewater treatment, water supply and stormwater facilities, public safety, and emergency services, while maintaining sufficient levels of service to existing development</p> <p><b><i>Roads and utility infrastructure will be required to extend into and through the development at the developer's cost.</i></b></p> |
| <u>X</u>   |              |            | <p>Whether the proposed rezoning will have a significant adverse impact on property in the vicinity of the subject property</p> <p><b><i>The proposed use is consistent with adjacent uses.</i></b></p>   |
|            |              | <u>N/A</u> | <p>For requests to a Neighborhood Density District, whether the proposed amendment complies with the compatibility of uses and density in Section 4.1.2.5</p> <p><b><i>This is not a request for a Neighborhood Density District.</i></b></p>   |
| <u>X</u>   |              |            | <p>The impact the proposed amendment has with regard to the natural environment, including the quality and quantity of water and other natural resources, flooding, and wildlife management</p> <p><b><i>Residential homes are appropriate for this site.</i></b></p>   |
| <u>X</u>   |              |            | <p>Any other factors which shall substantially affect the public health, safety, morals, or general welfare</p> <p><b><i>None noted.</i></b></p>  |

# ZC-20-12 Aerial View FD to SF-6 — Steen Road



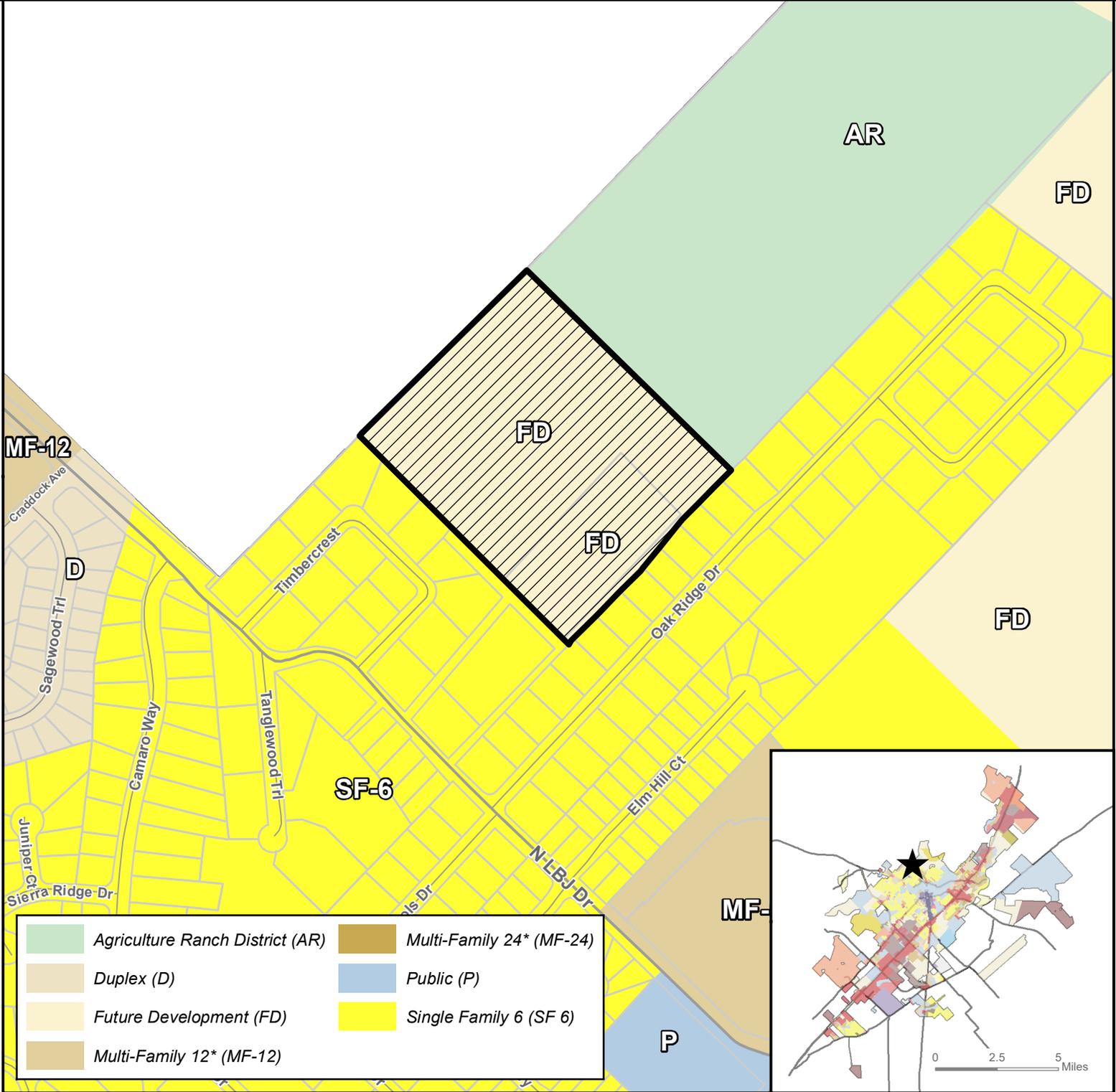
-  **Site Location**
-  **Subject Property**
-  **Parcel**
-  **City Limit**



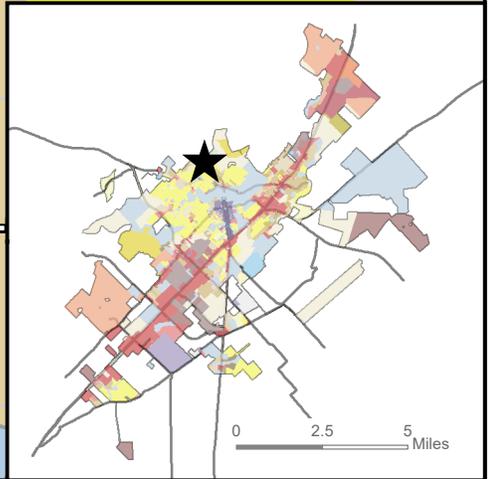
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.

Map Date: 9/1/2020

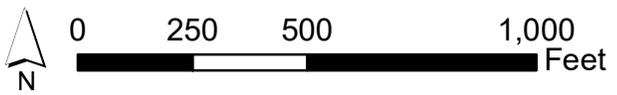
# ZC-20-12 Existing Zoning FD to SF-6 — Steen Rd



|  |                                 |   |                          |
|--|---------------------------------|---|--------------------------|
|  | Agriculture Ranch District (AR) |  | Multi-Family 24* (MF-24) |
|  | Duplex (D)                      |  | Public (P)               |
|  | Future Development (FD)         |  | Single Family 6 (SF 6)   |
|  | Multi-Family 12* (MF-12)        |   |                          |



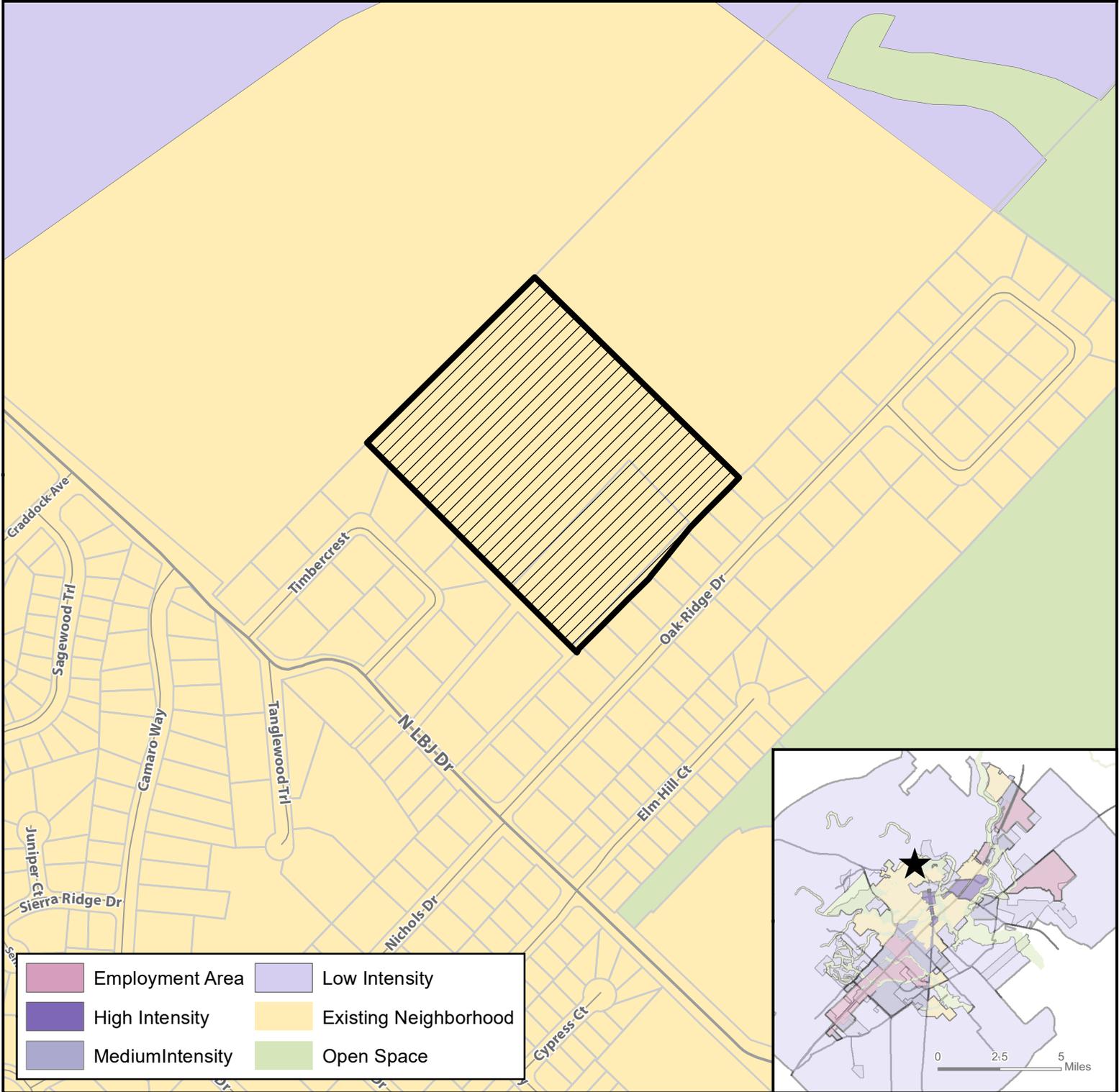
-  **Site Location**
-  **Subject Property**
-  **Parcels**
-  **City Limit**



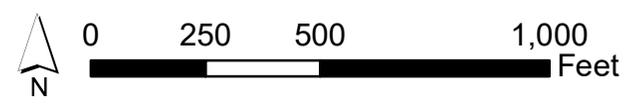
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 9/1/2020

# ZC-20-12 Preferred Scenario FD to SF-6 — Steen Rd



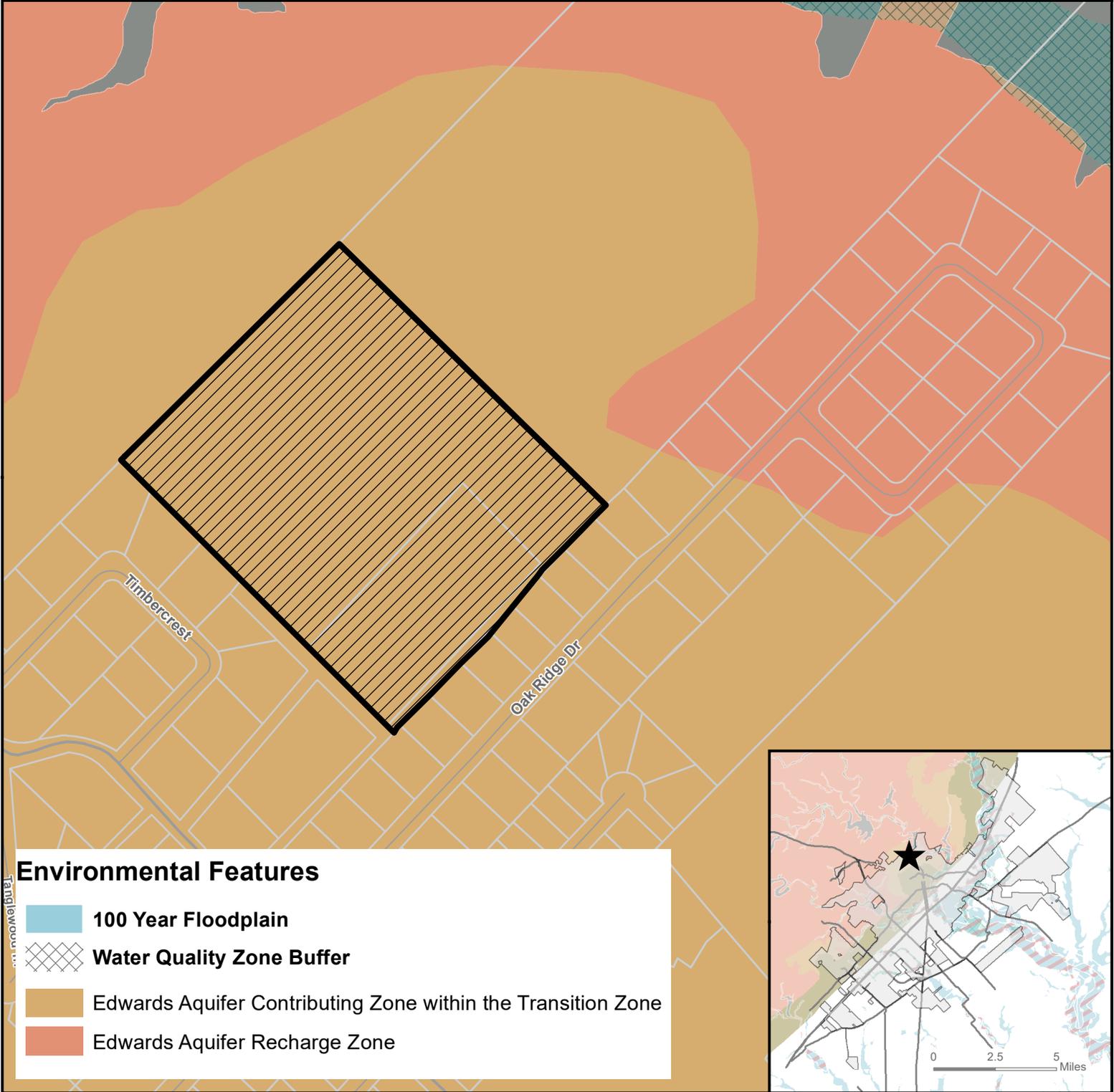
-  **Site Location**
-  **Subject Property**
-  **Parcels**
-  **City Limit**



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

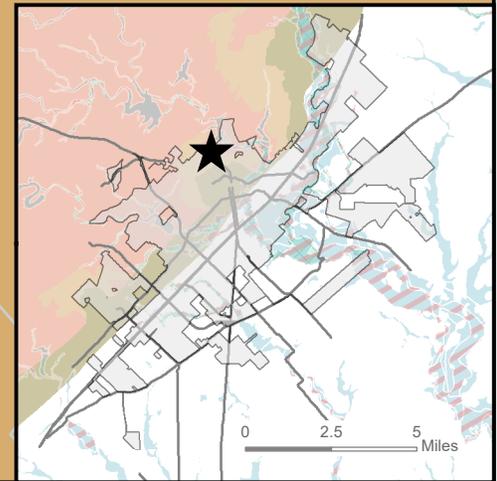
Map Date: 9/4/2020

# ZC-20-12 Environmental Features FD to SF-6 — Steen Rd

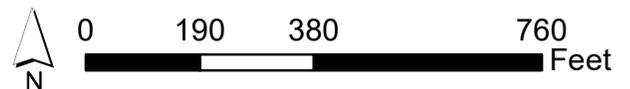


## Environmental Features

-  100 Year Floodplain
-  Water Quality Zone Buffer
-  Edwards Aquifer Contributing Zone within the Transition Zone
-  Edwards Aquifer Recharge Zone



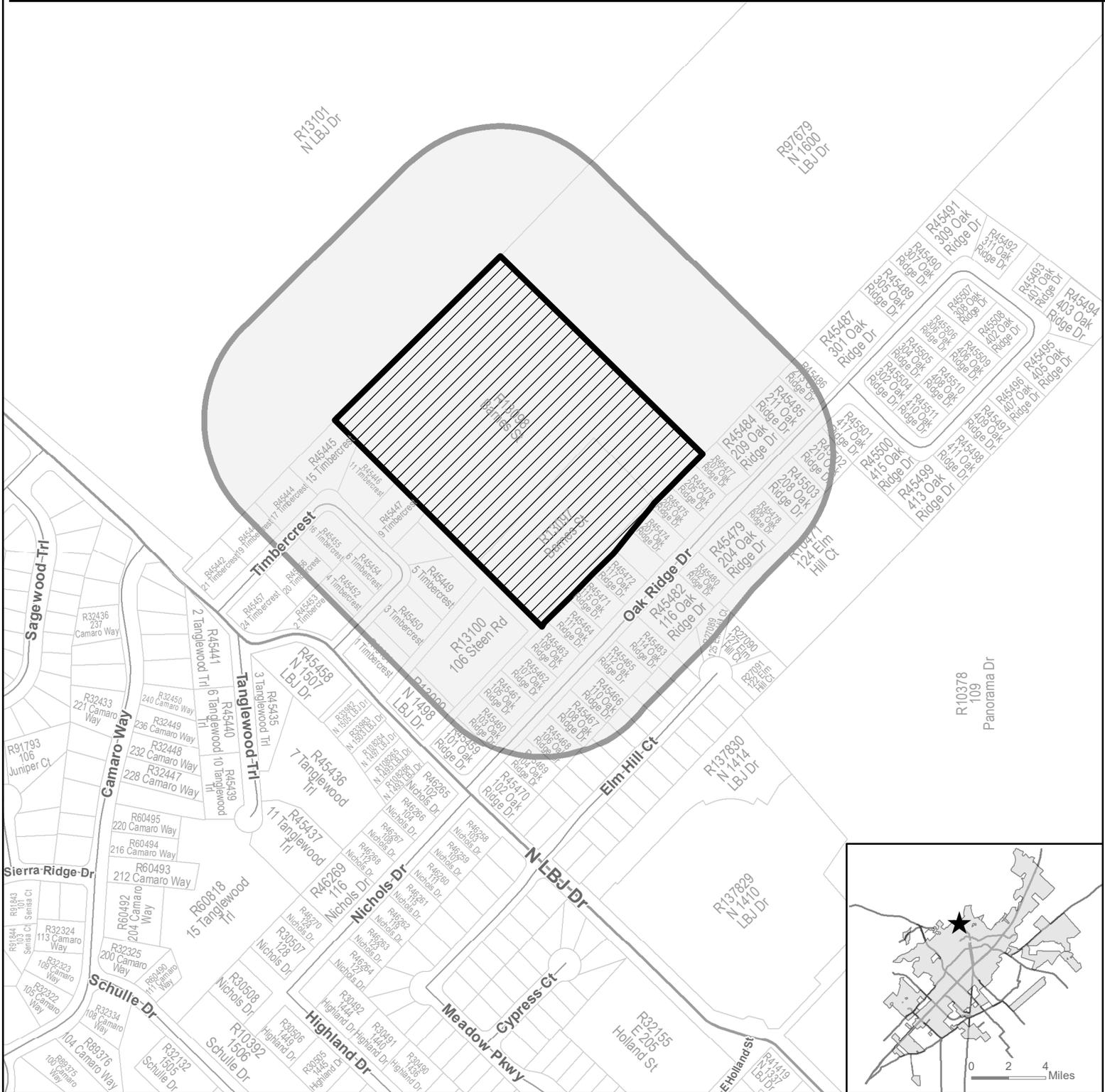
-  Site Location
-  Subject Property
-  Parcels
-  City Limit



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Map Date: 9/4/2020

# ZC-20-12 400' Notification Buffer FD to SF-6 — Steen Rd.



**Site Location**  
 **Subject Property**  
 **400' Buffer**  
 **Parcel**  
 **City Limit**

0 250 500 1,000 Feet

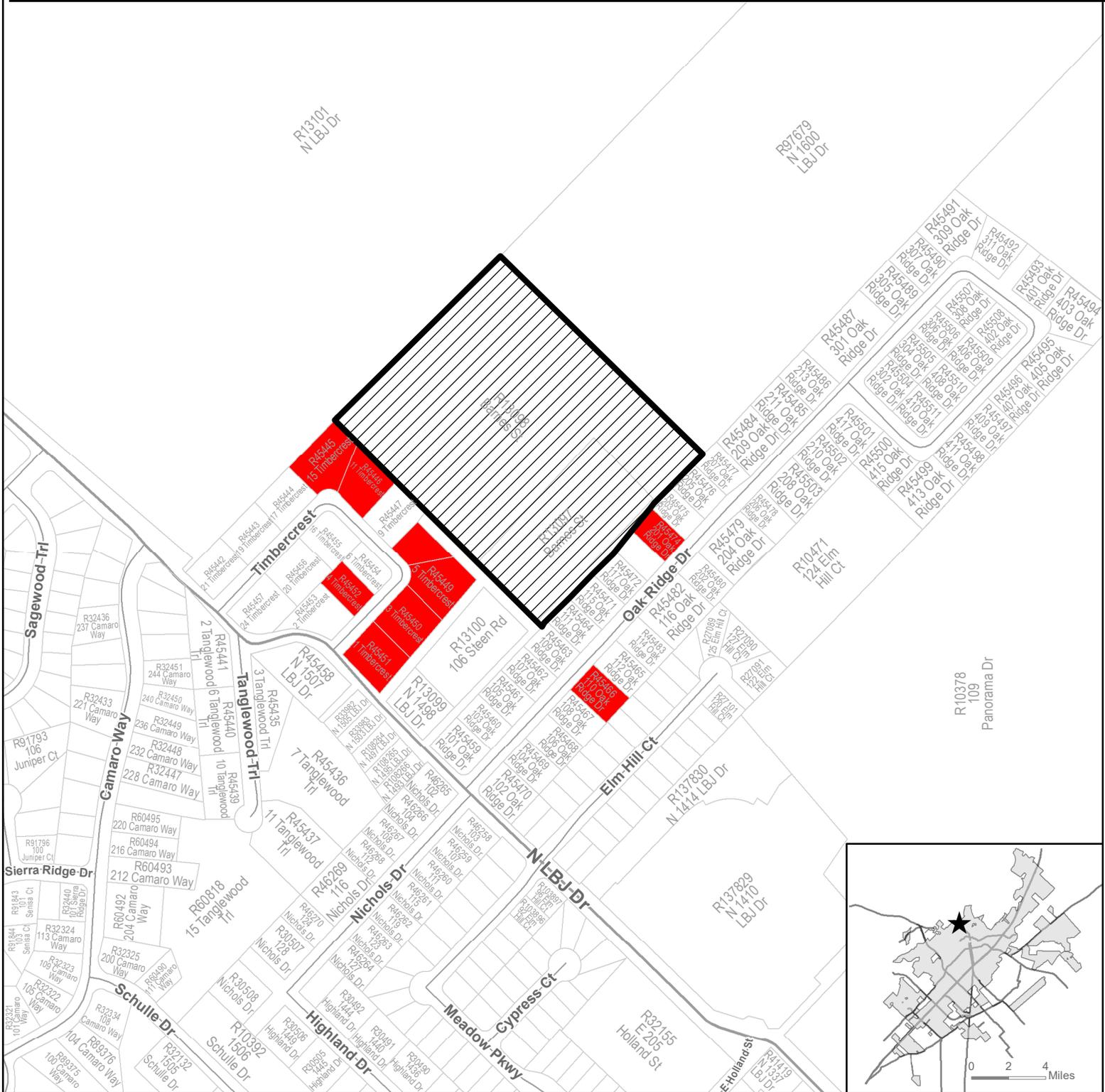
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**Map Date: 9/1/2020**

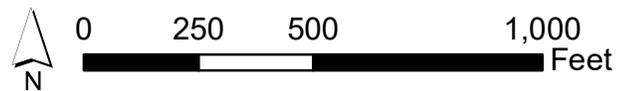
Notification List ZC-20-12

| ParcelID | OwnerName  | Site Address        | Address1                                 | Address2                    | City        | State | Zip        |
|----------|--|---------------------|--|-----------------------------|-------------|-------|------------|
| R45480   | ANDERSON, ALFRED ENOCH                                   | 202 OAK RIDGE DR    | 202 OAK RIDGE DR                         |                             | SAN MARCOS  | TX    | 78666      |
| R45452   | AYCOCK BILLY W & ESTATE OF JANE E                        | 4 TIMBER CREST      | 2867 ARROYO DOBLE                        |                             | SAN MARCOS  | TX    | 78666-1006 |
| R45486   | BOGGUS, ROBERT F   | 213 OAK RIDGE DR    | 122 DAWNS EDGE DR                        |                             | MONTRMERY   | TX    | 77356      |
| R45467   | BROUSSARD WILLIE R JR & SHIRLEY A REVOCABLE LIVING TRUST | 108 OAK RIDGE DR    | 1325 HENNING DR                          |                             | SULPHUR     | LA    | 70663      |
| R45469   | BURTON, CARRIE F   | 104 OAKRIDGE DR     | 104 OAKRIDGE DR                          |                             | SAN MARCOS  | TX    | 78666-3008 |
| R45450   | CALDWELL DANIEL & MELONIE J                              | 3 TIMBERCREST ST    | 3 TIMBERCREST ST                         |                             | SAN MARCOS  | TX    | 78666-3017 |
| R45471   | CASSEB JOHN BERTETTI                                     | 115 OAK RIDGE DR    | 635 EAST SUMMIT DRIVE                    |                             | WIMBERLEY   | TX    | 78676      |
| R45476   | CHRISTENSEN GAIL F TRUSTEE                               | 205 OAK RIDGE DR    | 15011 PUNTA RASSA RD                     | APT 404                     | FORT MYERS  | FL    | 33908-2738 |
| R45456   | CLARK JANET A  | 20 Timber Crest     | 147 OXFORD CT                            |                             | INDIALANTIC | FL    | 32903-2746 |
| R45455   | COX, JONATHAN F  | 16 TIMBERCREST ST   | 16 TIMBERCREST ST                        |                             | SAN MARCOS  | TX    | 78666-3018 |
| R27083   | DELOACH MARK D & ARLIS BERNADETTE                        | 111 ELM HILL CT     | 1512 WHELESS LN                          | APT 100                     | AUSTIN      | TX    | 78723-1101 |
| R45454   | ELLIOTT ROBERT & COLLEENE                                | 6 TIMBERCREST ST    | 6 TIMBERCREST ST                         |                             | SAN MARCOS  | TX    | 78666-3018 |
| R45446   | EURE JACK D JR LIV TRUST                                 | 11 TIMBER CREST     | EURE JACK D JR TRSTE                     | 11 TIMBER CREST             | SAN MARCOS  | TX    | 78666      |
| R27090   | FERNANDEZ EZEKIEL MARK & CAROL                           | 125 ELM HILL CT     | 125 ELM HILL CT                          |                             | SAN MARCOS  | TX    | 78666-3028 |
| R45445   | GILBERT, GEORGE  | 15 TIMBER CREST     | 15 TIMBER CREST                          |                             | SAN MARCOS  | TX    | 78666      |
| R45502   | GONZALEZ GENARO JR & LORI A                              | 210 OAK RIDGE DR    | 210 OAK RIDGE DR                         |                             | SAN MARCOS  | TX    | 78666      |
| R45473   | GROEGER, ALAN  | 119 OAK RIDGE DR    | 119 OAK RIDGE DR                         |                             | SAN MARCOS  | TX    | 78666      |
| R27084   | GUAJARDO GUILLERMO JR &                                  | 113 ELM HILL CT     | GONZALES CYNTHIA I                       | 113 ELM HILL CT             | SAN MARCOS  | TX    | 78666      |
| R45459   | HEFNER MARY LEA  | 101 OAKRIDGE DR     | 101 OAKRIDGE DR                          |                             | SAN MARCOS  | TX    | 78666-3007 |
| R27085   | HERNANDEZ BAASOLO LIVING TRUST                           | 115 ELM HILL CT     | CHAHO ELIAS B & HERNANDEZ EVA N TRUSTEES | 417 KENSINGTON DR           | MADISON     | WI    | 53701      |
| R27080   | HORNE, F R & L M LIVING TRUST                            | 204 OAK RIDGE DR    | Attn: HORNE FRANCIS R & LINDA M TRUSTEES | 204 OAK RIDGE DR            | SAN MARCOS  | TX    | 78666-3010 |
| R45463   | HOUSE, JULIE ANNE GARRETT                                | 109 OAK RIDGE DR    | 109 OAK RIDGE DR                         |                             | SAN MARCOS  | TX    | 78666      |
| R97679   | HUGHSON, JANE GARNETTE                                   | 1600 N LBJ DR       | 1600 N LBJ DR                            |                             | SAN MARCOS  | TX    | 78666      |
| R45447   | HURT, CHARLES R  | 9 TIMBER CREST      | 9 TIMBER CREST                           |                             | SAN MARCOS  | TX    | 78666      |
|          | CONA REP Jennifer Katz                                   | CONA Rep            |  |                             |             |       |            |
| R45475   | JENSEN JENNIFER & CALEB                                  | 203 OAK RIDGE DR    | 203 OAK RIDGE DR                         |                             | SAN MARCOS  | TX    | 78666      |
| R45462   | KELLER TIMOTHY ALAN & BOYCE CHRISTINA K A                | 107 OAK RIDGE DR    | 460 STEVENS AVE                          |                             | RATON       | NM    | 87740      |
| R27082   | KOUHANA NATHAN   | 109 ELM HILL CT     | 109 ELM HILL CT                          |                             | San Marcos  | TX    | 78666      |
| R45460   | LAMBERT JOHN D JR & DORIS C LIVING TRUST                 | 103 OAKRIDGE DR     | 103 OAKRIDGE DR                          |                             | SAN MARCOS  | TX    | 78666      |
| R45482   | LAS FRENTES RANCH LTD                                    | 116 OAK RIDGE DR    | P O BOX 450309                           |                             | LAREDO      | TX    | 78045-0309 |
| R45465   | LEGARE JOCELYN L   | 112 OAKRIDGE DR     | 112 OAKRIDGE DR                          |                             | SAN MARCOS  | TX    | 78666-3008 |
| R45468   | LIGHTHOUSE KATHERINE P (ESTATE)                          | 106 OAK RIDGE DR    | % TRANSIER LYNDA L (IND EXE)             | 1610 HAZARD ST              | HOUSTON     | TX    | 77019-5308 |
| R13098   | LOP/SM PROPERTIES LLC                                    | STEEN RD            | 2370 RICE BLVD STE 200                   |                             | HOUSTON     | TX    | 77005      |
| R45485   | MANFORD LA RUE C TRUST                                   | 211 OAK RIDGE DR    | % LA RUE COOK MANFORD                    | 1402 WILSHIRE BLVD          | AUSTIN      | TX    | 78722      |
| R45461   | MARTINEZ ANGELICA ALEGRIA &                              | 105 OAK RIDGE DR    | ANGELICA DIAZ IRREVOCABLE TRUST          | 105 OAK RIDGE DR            | SAN MARCOS  | TX    | 78666      |
| R45449   | MEDINA, RICHARD R & NAOMI R                              | 5 TIMBERCREST ST    | 5 TIMBERCREST ST                         |                             | SAN MARCOS  | TX    | 78666-3017 |
| R45466   | MOERKE ROBERT C & MARY ANN                               | 110 OAK RIDGE DR    | 110 OAK RIDGE DR                         |                             | SAN MARCOS  | TX    | 78666      |
| R45478   | MONTONDON LUCILLE M & MARCUS J                           | 206 OAK RIDGE DR    | 206 OAK RIDGE DR                         |                             | SAN MARCOS  | TX    | 78666      |
| R45451   | OSBORNE RANDALL E & DIANE M                              | 1 TIMBER CREST      | 1 TIMBER CREST                           |                             | SAN MARCOS  | TX    | 78666      |
| R45484   | PEARCE LIVING TRUST                                      | 209 OAK RIDGE DRIVE | PEARCE MICHAEL L & JANE V TRUSTEES       | 209 OAK RIDGE DRIVE         | SAN MARCOS  | TX    | 78666      |
| R27086   | PORTER, LINDA SUE  | 119 ELM HILL CT     | P O BOX 422                              |                             | SAN MARCOS  | TX    | 78667-0422 |
| R45501   | RANDOW JOSHUA L & LINDSEY M                              | 417 OAKRIDGE DR     | 417 OAKRIDGE DR                          |                             | SAN MARCOS  | TX    | 78666-3025 |
| R45448   | SAUNDERS JANE MARIE                                      | 7 TIMBERCREST ST    | 7 TIMBERCREST ST                         |                             | SAN MARCOS  | TX    | 78666-3017 |
| R45464   | SCOTT MILDRED B  | 111 OAK RIDGE DR    | PO BOX 1101                              |                             | SAN MARCOS  | TX    | 78667-1101 |
| R10471   | SEIF, SHERAN   | 124 ELM HILL CT     | 124 ELM HILL CT                          |                             | SAN MARCOS  | TX    | 78666      |
| R45483   | SNELL GLORIA HADA  | 114 OAK RIDGE DR    | PO BOX 178                               |                             | SAN MARCOS  | TX    | 78667-0178 |
| R45474   | STERN HAROLD PHILIP ELLIOTT & LEE ELLIOTT                | 201 OAK RIDGE DR    | 201 OAK RIDGE DR                         |                             | SAN MARCOS  | TX    | 78666      |
| R45472   | SUTHERLUN JOSHUA C & AMY P                               | 117 OAKRIDGE DR     | 117 OAKRIDGE DR                          |                             | SAN MARCOS  | TX    | 78666-3007 |
| R45444   | THEISS, LORIN W  | 17 TIMBER CREST     | PO BOX 241                               |                             | BOERNE      | TX    | 78006-0241 |
| R27081   | ULLRICH ERNEST O & MARTHA                                | 107 ELM HILL CT     | 7152 FM 1624                             |                             | LEXINGTON   | TX    | 78947      |
| R27087   | WALKER, JOHN L   | 121 ELM HILL CT     | 121 ELM HILL CT                          |                             | SAN MARCOS  | TX    | 78666      |
| R45443   | WEST FRANCES G   | 19 TIMBER CREST     | % SPEARS SUNDRA L                        | 1920 CORPORATE DR STE 205 B | SAN MARCOS  | TX    | 78666      |

# ZC-20-12 Public Hearing Speakers Map FD to SF-6 — Steen Rd.



- Speakers in Opposition
- ★ Site Location
- Subject Property
- Parcel
- City Limit



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Map Date: 9/23/2020

Future Development (FD) VS. Single Family (SF-6)

Section 5.1.1.2 Land Use Matrix

TABLE 5.1 LAND USE MATRIX

| TYPES OF LAND USES                     | CONVENTIONAL RESIDENTIAL |      |      |        | NEIGHBORHOOD DENSITY DISTRICTS |        |      |      | CHARACTER DISTRICTS |      |      |      |      |       | SPECIAL DISTRICTS |    |    |    |    | DEFINITION USE STANDARDS |
|--|--------------------------|------|------|--------|--------------------------------|--------|------|------|---------------------|------|------|------|------|-------|-------------------|----|----|----|----|--------------------------|
|  | FD                       | SF-R | SF-6 | SF-4.5 | ND-3                           | ND-3.5 | ND-4 | N-MS | CD-1                | CD-2 | CD-3 | CD-4 | CD-5 | CD-5D | HC                | LI | HI | MH | EC |                          |
| <b>AGRICULTURAL USES</b>               |                          |      |      |        |                                |        |      |      |                     |      |      |      |      |       |                   |    |    |    |    |                          |
| Barns or agricultural buildings        | P                        | L    | --   | --     | --                             | --     | --   | --   | P                   | P    | L    | --   | --   | --    | P                 | -- | -- | -- | -- | Section 5.1.2.1          |
| Stables                                | P                        | L    | --   | --     | --                             | --     | --   | --   | --                  | P    | L    | --   | --   | --    | P                 | -- | -- | -- | -- | Section 5.1.2.2          |
| Community Garden                       | P                        | P    | L    | L      | L                              | L      | L    | --   | P                   | P    | L    | L    | L    | L     | P                 | P  | P  | P  | P  | Section 5.1.2.3          |
| Urban Farm                             | P                        | C    | C    | C      | C                              | L      | L    | C    | P                   | P    | L    | L    | C    | C     | P                 | P  | -- | P  | C  | Section 5.1.2.4          |
| Plant Nursery                          | L                        | --   | --   | --     | --                             | --     | --   | P    | --                  | L    | --   | --   | P    | P     | P                 | P  | P  | -- | P  | Section 5.1.2.5          |
| <b>ACCESSORY USES AND STRUCTURES</b>   |                          |      |      |        |                                |        |      |      |                     |      |      |      |      |       |                   |    |    |    |    |                          |
| Accessory Building/Structure           | P                        | P    | P    | P      | P                              | P      | P    | P    | P                   | P    | P    | P    | P    | P     | P                 | P  | P  | P  | P  | Section 5.1.3.1          |
| Accessory Dwelling Unit                | L                        | L    | L    | L      | L                              | L      | P    | P    | --                  | P    | L    | P    | P    | P     | --                | -- | -- | -- | -- | Section 5.1.3.1          |
| Accessory Use, except as listed below: | P                        | P    | P    | P      | P                              | P      | P    | P    | P                   | P    | P    | P    | P    | P     | P                 | P  | P  | P  | P  | Section 5.1.3.2          |
| Outdoor Storage                        | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | P                 | L  | P  | -- | L  | Section 5.1.3.2          |
| Outdoor Display                        | --                       | --   | --   | --     | --                             | --     | --   | L    | --                  | --   | --   | --   | L    | L     | P                 | -- | -- | -- | L  | Section 5.1.3.2          |
| Food Truck                             | --                       | --   | --   | --     | --                             | --     | --   | P    | --                  | --   | --   | --   | P    | P     | P                 | P  | P  | -- | P  | Section 5.1.3.1          |
| Drive-thru or Drive-in                 | --                       | --   | --   | --     | --                             | --     | --   | C    | --                  | --   | --   | --   | C    | C     | P                 | -- | -- | -- | P  | Section 5.1.3.2          |
| Home Occupation                        | L                        | L    | L    | L      | L                              | L      | L    | --   | --                  | L    | L    | L    | --   | --    | --                | -- | -- | -- | -- | Section 5.1.3.4          |
| Family Home Care                       | P                        | P    | P    | P      | P                              | P      | P    | --   | --                  | P    | P    | P    | --   | --    | --                | -- | -- | -- | -- | Section 5.1.3.5          |
| Short Term Rental                      | L                        | L    | L    | L      | L                              | L      | L    | P    | --                  | L    | L    | P    | P    | P     | --                | -- | -- | L  | P  | Section 5.1.3.6          |
| <b>RESIDENTIAL USES</b>                |                          |      |      |        |                                |        |      |      |                     |      |      |      |      |       |                   |    |    |    |    |                          |
| Single Family Detached                 | P                        | L    | L    | L      | L                              | L      | L    | --   | --                  | P    | P    | P    | --   | --    | --                | -- | -- | -- | -- | Section 5.1.4.1          |
| Cottage Court                          | --                       | --   | --   | --     | --                             | L      | L    | --   | --                  | --   | P    | P    | --   | --    | --                | -- | -- | -- | -- | Section 5.1.4.1          |
| Two Family                             | --                       | --   | --   | --     | --                             | L      | L    | --   | --                  | --   | P    | P    | --   | --    | --                | -- | -- | -- | -- | Section 5.1.4.1          |
| Single Family Attached                 | --                       | --   | --   | --     | L                              | L      | L    | L    | --                  | --   | P    | P    | P    | P     | --                | -- | -- | -- | -- | Section 5.1.4.1          |
| Small Multi-Family (up to 9 units)     | --                       | --   | --   | --     | --                             | L      | L    | L    | --                  | --   | --   | P    | P    | P     | --                | -- | -- | -- | -- | Section 5.1.4.1          |
| Courtyard Housing (up to 24 units)     | --                       | --   | --   | --     | --                             | --     | L    | L    | --                  | --   | --   | P    | P    | P     | --                | -- | -- | -- | -- | Section 5.1.4.1          |
| Multi-family (10 or more units)        | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | P    | P    | P     | --                | -- | -- | -- | -- | Section 5.1.4.1          |
| Purpose Built Student Housing          | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | C    | C     | --                | -- | -- | -- | -- | Section 5.1.4.1          |
| Manufactured Home                      | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | --                | -- | -- | P  | -- | Section 5.1.4.1          |
| Mobile Home Community                  | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | --                | -- | -- | P  | -- | Section 5.1.4.1          |

TABLE 5.1 LAND USE MATRIX

| TYPES OF LAND USES                         | CONVENTIONAL RESIDENTIAL                   |      |      |        | NEIGHBORHOOD DENSITY DISTRICTS |        |      |      | CHARACTER DISTRICTS |      |      |      |      |       | SPECIAL DISTRICTS |    |    |    |    | DEFINITION USE STANDARDS |
|--|--|------|------|--------|--------------------------------|--------|------|------|---------------------|------|------|------|------|-------|-------------------|----|----|----|----|--------------------------|
|  | FD   | SF-R | SF-6 | SF-4.5 | ND-3                           | ND-3.5 | ND-4 | N-MS | CD-1                | CD-2 | CD-3 | CD-4 | CD-5 | CD-5D | HC                | LI | HI | MH | EC |                          |
| Community Home                             | L  | L    | L    | L      | L                              | L      | P    | P    | --                  | P    | P    | P    | P    | P     | --                | -- | -- | L  | -- | Section 5.1.4.12         |
| Fraternity or Sorority Building            | --   | --   | --   | --     | --                             | --     | C    | C    | --                  | --   | --   | C    | P    | P     | --                | -- | -- | -- | -- | Section 5.1.4.12         |
| <b>COMMERCIAL USES</b>                     |  |      |      |        |                                |        |      |      |                     |      |      |      |      |       |                   |    |    |    |    |                          |
| Professional Office                        | --   | --   | --   | --     | --                             | --     | L    | P    | --                  | --   | --   | L    | P    | P     | P                 | P  | -- | -- | P  | Section 5.1.5.1          |
| Medical, except as listed below:           | --   | --   | --   | --     | --                             | --     | L    | P    | --                  | --   | --   | L    | P    | P     | P                 | -- | -- | -- | P  | Section 5.1.5.2          |
| Urgent care, emergency clinic, or hospital | --   | --   | --   | --     | --                             | --     | --   | P    | --                  | --   | --   | --   | P    | P     | P                 | P  | -- | -- | P  | Section 5.1.5.2          |
| Nursing/ retirement home                   | --   | --   | --   | --     | --                             | --     | P    | P    | --                  | --   | --   | P    | P    | P     | P                 | -- | -- | -- | P  | Section 5.1.5.2          |
| Personal Services, except as listed below: | --   | --   | --   | --     | --                             | --     | L    | P    | --                  | --   | --   | L    | P    | P     | P                 | -- | -- | -- | P  | Section 5.1.5.3          |
| Animal care (indoor)                       | C  | --   | --   | --     | --                             | --     | --   | P    | --                  | --   | --   | --   | P    | P     | P                 | -- | -- | -- | P  | Section 5.1.5.3          |
| Animal care (outdoor)                      | C  | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | C                 | -- | -- | -- | C  | Section 5.1.5.3          |
| Funeral Home                               | --   | --   | --   | --     | --                             | --     | --   | C    | --                  | --   | --   | --   | C    | C     | P                 | -- | -- | -- | P  | Section 5.1.5.3          |
| Adult Oriented Businesses                  | See Section 18, Article 6 of the City Code |      |      |        |                                |        |      |      |                     |      |      |      |      |       |                   |    |    |    |    |                          |
| All Retail Sales, except as listed below:  | --   | --   | --   | --     | --                             | --     | L    | P    | --                  | --   | --   | L    | P    | P     | P                 | -- | -- | -- | P  | Section 5.1.5.4          |
| Gasoline Sales                             | --   | --   | --   | --     | --                             | --     | --   | L    | --                  | --   | --   | --   | C    | C     | P                 | -- | -- | -- | P  | Section 5.1.5.4          |
| Truck stop                                 | --   | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | L                 | -- | -- | -- | L  | Section 5.1.5.4          |
| Tattoo, body piercing                      | --   | --   | --   | --     | --                             | --     | C    | C    | --                  | --   | --   | C    | P    | P     | P                 | -- | -- | -- | P  | Section 5.1.5.4          |
| Building material sales                    | --   | --   | --   | --     | --                             | --     | --   | C    | --                  | --   | --   | --   | C    | C     | P                 | P  | P  | -- | P  | Section 5.1.5.4          |
| Vehicle Sales/ Rental                      | --   | --   | --   | --     | --                             | --     | --   | C    | --                  | --   | --   | --   | C    | C     | P                 | -- | -- | -- | P  | Section 5.1.5.4          |
| Pawnshop                                   | --   | --   | --   | --     | --                             | --     | --   | C    | --                  | --   | --   | C    | P    | P     | P                 | -- | -- | -- | P  | Section 5.1.5.4          |
| Restaurant/ Bar, as listed below:          |  |      |      |        |                                |        |      |      |                     |      |      |      |      |       |                   |    |    |    |    |                          |
| Eating Establishment                       | --   | --   | --   | --     | --                             | --     | L    | P    | --                  | --   | --   | L    | P    | P     | P                 | -- | -- | -- | P  | Section 5.1.5.5          |
| Bar  | --   | --   | --   | --     | --                             | --     | --   | C    | --                  | --   | --   | --   | C    | C     | C                 | -- | -- | -- | C  | Section 5.1.5.5          |
| Mobile Food Court                          | --   | --   | --   | --     | --                             | --     | --   | C    | --                  | --   | --   | --   | P    | P     | --                | -- | -- | -- | -- | Section 5.1.5.5          |
| Sale of Alcohol for on premise consumption | --   | --   | --   | --     | --                             | --     | C    | C    | --                  | --   | --   | C    | C    | C     | C                 | -- | -- | -- | C  | Section 5.1.5.5          |
| Overnight Lodging, as listed below:        |  |      |      |        |                                |        |      |      |                     |      |      |      |      |       |                   |    |    |    |    |                          |
| Bed and Breakfast (up to 8 rooms)          | L  | C    | C    | C      | C                              | L      | L    | P    | --                  | P    | C    | P    | P    | P     | --                | -- | -- | -- | P  | Section 5.1.5.6          |
| Boutique Hotel (9 - 30 rooms)              | --   | --   | --   | --     | --                             | --     | C    | P    | --                  | --   | --   | P    | P    | P     | --                | -- | -- | -- | P  | Section 5.1.5.6          |

TABLE 5.1 LAND USE MATRIX

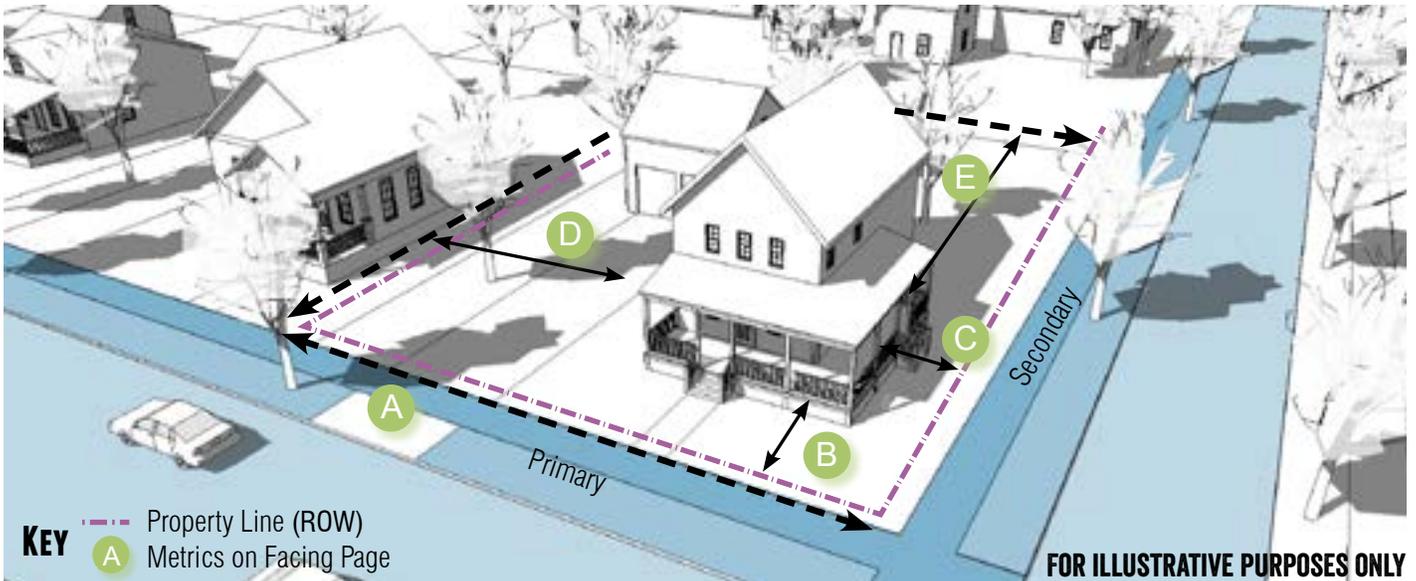
| TYPES OF LAND USES                          | CONVENTIONAL RESIDENTIAL |      |      |        | NEIGHBORHOOD DENSITY DISTRICTS |        |      |      | CHARACTER DISTRICTS |      |      |      |      |       | SPECIAL DISTRICTS |    |    |    |    | DEFINITION USE STANDARDS |
|---|--------------------------|------|------|--------|--------------------------------|--------|------|------|---------------------|------|------|------|------|-------|-------------------|----|----|----|----|--------------------------|
|   | FD                       | SF-R | SF-6 | SF-4.5 | ND-3                           | ND-3.5 | ND-4 | N-MS | CD-1                | CD-2 | CD-3 | CD-4 | CD-5 | CD-5D | HC                | LI | HI | MH | EC |                          |
| Hotel/ Motel (more than 30 rooms)           | --                       | --   | --   | --     | --                             | --     | --   | P    | --                  | --   | --   | --   | P    | P     | --                | -- | -- | -- | P  | Section 5.1.5.6          |
| Outdoor Recreation, except as listed below: | --                       | --   | --   | --     | --                             | --     | --   | C    | --                  | --   | --   | --   | P    | C     | P                 | -- | -- | -- | P  | Section 5.1.5.7          |
| Golf Course                                 | C                        | C    | C    | C      | C                              | C      | C    | C    | C                   | C    | C    | C    | C    | C     | --                | -- | -- | C  | C  | Section 5.1.5.7          |
| Traveler Trailers/ RVs Short Term stays     | P                        | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | P                 | -- | -- | P  | -- | Section 5.1.5.7          |
| Shooting Range                              | C                        | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | C                 | -- | -- | -- | C  | Section 5.1.5.7          |
| Indoor Recreation, except as listed below:  | --                       | --   | --   | --     | --                             | --     | --   | P    | --                  | --   | --   | --   | P    | P     | P                 | P  | P  | -- | P  | Section 5.1.5.8          |
| Gym/ Health club                            | --                       | --   | --   | --     | --                             | --     | L    | P    | --                  | --   | --   | L    | P    | P     | P                 | P  | P  | -- | P  | Section 5.1.5.8          |
| Smoking Lounge                              | --                       | --   | --   | --     | --                             | --     | --   | C    | --                  | --   | --   | --   | P    | C     | --                | -- | -- | -- | P  | Section 5.1.5.8          |
| Charitable Gaming Facility                  | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | C    | --    | C                 | -- | -- | -- | C  | Section 5.1.5.8          |
| <b>PUBLIC &amp; INSTITUTIONAL</b>           |                          |      |      |        |                                |        |      |      |                     |      |      |      |      |       |                   |    |    |    |    |                          |
| Civic, except as listed below:              | P                        | L    | L    | L      | L                              | L      | P    | P    | L                   | L    | L    | P    | P    | P     | P                 | P  | P  | P  | P  | Section 5.1.6.1          |
| Day Care Center                             | C                        | --   | --   | --     | C                              | C      | L    | P    | --                  | C    | C    | L    | P    | P     | P                 | -- | -- | -- | P  | Section 5.1.6.1          |
| Parks, Open Space, and Greenways            | P                        | P    | P    | P      | P                              | P      | P    | P    | P                   | P    | P    | P    | P    | P     | P                 | P  | P  | P  | P  | Section 5.1.6.2          |
| Minor Utilities                             | P                        | P    | P    | P      | P                              | P      | P    | P    | P                   | P    | P    | P    | P    | P     | P                 | P  | P  | P  | P  | Section 5.1.6.3          |
| Major Utilities                             | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | C                 | C  | C  | -- | -- | Section 5.1.6.3          |
| Antenna                                     | See Section 5.1.6.3D     |      |      |        |                                |        |      |      |                     |      |      |      |      |       |                   |    |    |    |    |                          |
| <b>INDUSTRIAL</b>                           |                          |      |      |        |                                |        |      |      |                     |      |      |      |      |       |                   |    |    |    |    |                          |
| Light Industrial                            | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | C    | --    | --                | P  | P  | -- | C  | Section 5.1.7.1          |
| Light Manufacturing                         | --                       | --   | --   | --     | --                             | --     | --   | C    | --                  | --   | --   | --   | P    | P     | P                 | P  | P  | -- | P  | Section 5.1.7.2          |
| Vehicle Service, as listed below:           |                          |      |      |        |                                |        |      |      |                     |      |      |      |      |       |                   |    |    |    |    | Section 5.1.7.3          |
| Car Wash                                    | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | P                 | P  | P  | -- | C  | Section 5.1.7.3          |
| Vehicle repair (minor)                      | --                       | --   | --   | --     | --                             | --     | --   | C    | --                  | --   | --   | --   | P    | P     | P                 | P  | P  | -- | C  | Section 5.1.7.3          |
| Vehicle repair (major)                      | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | P                 | -- | -- | -- | C  | Section 5.1.7.3          |
| Warehouse & Distribution                    | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | C    | --    | P                 | P  | P  | -- | P  | Section 5.1.7.4          |
| Waste-Related service                       | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | C    | --    | P                 | P  | P  | -- | -- | Section 5.1.7.5          |
| Wholesale trade                             | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | P                 | P  | P  | -- | P  | Section 5.1.7.6          |
| Self Storage                                | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | P                 | P  | P  | -- | C  | Section 5.1.7.7          |
| Research and Development                    | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | C    | C     | P                 | P  | P  | -- | C  | Section 5.1.7.8          |
| Wrecking/Junk Yard                          | --                       | --   | --   | --     | --                             | --     | --   | --   | --                  | --   | --   | --   | --   | --    | --                | -- | P  | -- | -- | Section 5.1.7.9          |

## Zoning District Comparison Chart

| Topic                               | <b>Existing Zoning:<br/>Future Development (FD)</b>   | <b>Proposed Zoning:<br/>Single Family (SF-6)</b>   |
|-------------------------------------|---|--|
| <b>Zoning Description</b>           | The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings. | The SF-6 district is intended to accommodate single family detached houses with a minimum lot size of 6,000 square feet. Characterized by smaller landscaped areas with moderate setbacks and more frequent pedestrian use. Uses that would substantially interfere with the residential nature of the district are not allowed. |
| <b>Uses</b>                         | Residential ( <i>See Land Use Matrix</i> )  | Single-family residential. ( <i>See Land Use Matrix</i> )  |
| <b>Parking Location</b>             | No location standards   | No location standards  |
| <b>Parking Standards</b>            | 2 spaces per dwelling unit (if single family detached)  | 2 space per dwelling unit.   |
| <b>Max Residential Units / acre</b> | 0.4 units per acre (max)  | 5.5 units per acre (max)   |
| <b>Occupancy Restrictions</b>       | N/A   | N/A  |
| <b>Landscaping</b>                  | Tree and shrub requirements   | Tree and shrub requirements  |
| <b>Building Height (max)</b>        | 2 stories   | 2 stories  |
| <b>Setbacks</b>                     | 50' front setback, 20 ft side setback, .<br>Rear setback: 20% of the lot depth  | 25' front Setback, 5' side setback, 20' rear set back.   |
| <b>Impervious Cover (max)</b>       | 30%   | 50%  |
| <b>Lot Sizes</b>                    | Allows a variety of lot sizes depending on Building Type.   | Allows a variety of lot sizes depending on Building Type.  |
| <b>Streetscapes</b>                 | Residential Street: 5' sidewalk for lots smaller than 1 acre, street trees every 40' on center average, 7' planting area.   | Residential, and Conventional.   |
| <b>Blocks</b>                       | No Block Perimeter Required   | 3,000 ft. Block Perimeter max.   |

SF-6

SECTION 4.4.1.3 SINGLE FAMILY - 6



**GENERAL DESCRIPTION**

The SF-6 district is intended to accommodate single family detached houses with a minimum lot size of 6,000 square feet. Characterized by smaller landscaped areas with moderate setbacks and more frequent pedestrian use. Uses that would substantially interfere with the residential nature of the district are not allowed.

**DENSITY**

|                        |                 |
|------------------------|-----------------|
| Units Per Gross Acre   | 5.5 max.        |
| Impervious Cover       | 50% max.        |
| Occupancy Restrictions | Section 5.1.4.1 |

**TRANSPORTATION**

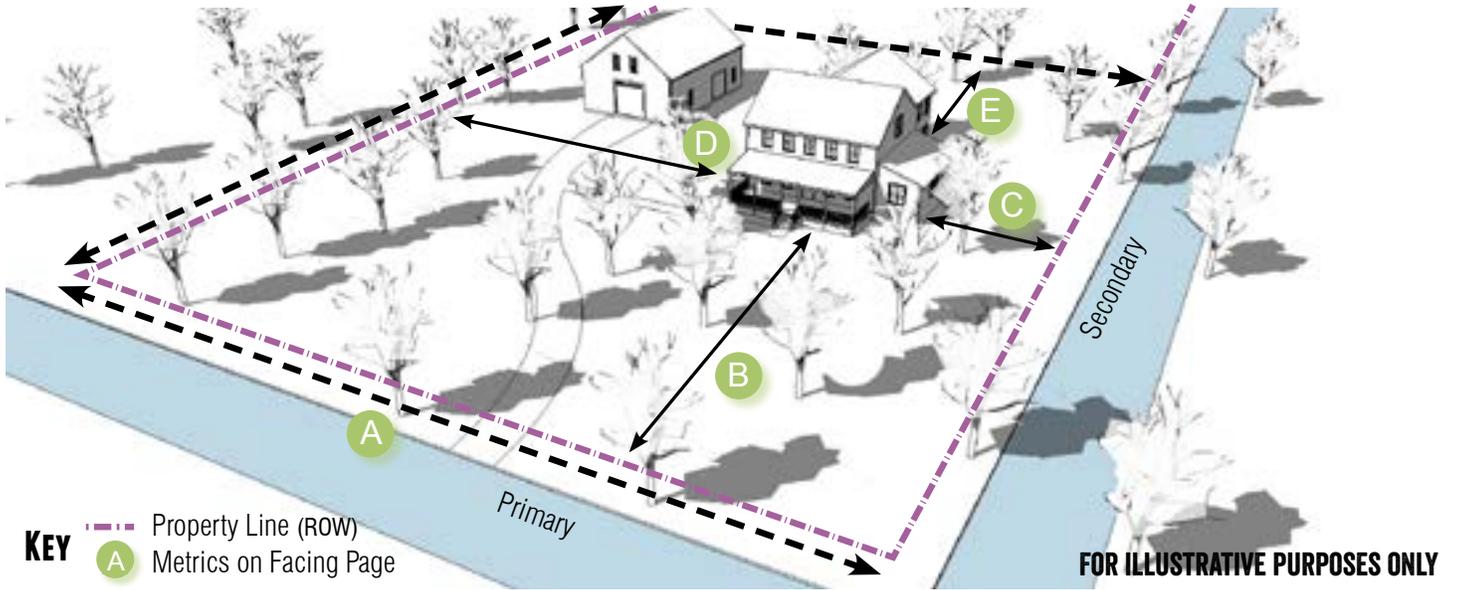
|   |               |                  |
|---|---------------|------------------|
| Block Perimeter   | 3,000 ft. max | Section 3.6.2.1  |
| Streetscape Type  | Residential   | Section 3.8.1.10 |
| Sidewalks are not required for lots greater than 1 acre |               |                  |

**BUILDING TYPES ALLOWED**

|                    |                  |
|--------------------|------------------|
| Accessory Dwelling | Section 4.4.6.1  |
| House              | Section 4.4.6.2  |
| Cottage            | Section 4.4.6.3  |
| Civic              | Section 4.4.6.15 |

## FD

### SECTION 4.4.1.1 FUTURE DEVELOPMENT DISTRICT



#### GENERAL DESCRIPTION

The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.

#### DENSITY

|                      |          |
|----------------------|----------|
| Units Per Gross Acre | .4 max.  |
| Impervious Cover     | 30% max. |

#### TRANSPORTATION

|   |             |                  |
|---|-------------|------------------|
| Streetscape Type  | Residential | Section 3.8.1.10 |
| Sidewalks are not required for lots greater than 1 acre |             |                  |

#### BUILDING TYPES ALLOWED

|                    |                  |
|--------------------|------------------|
| Accessory Dwelling | Section 4.4.6.1  |
| House              | Section 4.4.6.2  |
| Civic              | Section 4.4.6.15 |

**ZC-20-12 (Steen Road) Zoning Change Review (By Comp Plan Element)**

**LAND USE – Preferred Scenario Map / Land Use Intensity Matrix**

|   |     |                                |
|---|-----|--------------------------------|
|   | YES | NO<br>(map amendment required) |
| Does the request meet the intent of the Preferred Scenario Map and the Land Use Intensity Matrix? | X   |                                |

**ECONOMIC DEVELOPMENT – Furthering the goal of the Core 4 through the three strategies**

| STRATEGY  | SUMMARY   | Supports | Contradicts | Neutral  |
|---|---|----------|-------------|--|
| Preparing the 21 <sup>st</sup> Century Workforce        | Provides / Encourages educational opportunities   |          |             | Applicant has not indicated that educational facilities will be included.              |
| Competitive Infrastructure & Entrepreneurial Regulation | Provides / Encourages land, utilities and infrastructure for business   |          |             | Applicant will extend utilities to the site in order to develop.                       |
| The Community of Choice                                 | Provides / Encourages safe & stable neighborhoods, quality schools, fair wage jobs, community amenities, distinctive identity |          |             | Applicant has not indicated that opportunities for jobs and services will be included. |

**ENVIRONMENT & RESOURCE PROTECTION – Land Use Suitability & Development Constraints**

|                             | 1<br>(least) | 2 | 3<br>(moderate) | 4 | 5<br>(most) |
|-----------------------------|--------------|---|-----------------|---|-------------|
| Level of Overall Constraint |              |   |                 |   | X           |
| Constraint by Class         |              |   |                 |   |             |
| Cultural                    | X            |   |                 |   |             |
| Edwards Aquifer             |              |   | X               |   |             |
| Endangered Species          | X            |   |                 |   |             |
| Floodplains                 | X            |   |                 |   |             |
| Geological                  | X            |   |                 |   |             |
| Slope                       | X            |   | X               |   | X           |
| Soils                       | X            |   |                 | X |             |
| Vegetation                  |              |   | X               |   |             |
| Watersheds                  | X            |   |                 |   |             |
| Water Quality Zone          | X            |   |                 |   |             |

**ENVIRONMENT & RESOURCE PROTECTION – Water Quality Model Results**

|  |                   |          |        |         |       |
|--|-------------------|----------|--------|---------|-------|
| Located in Subwatershed:   | <b>Sink Creek</b> |          |        |         |       |
|  | 0-25%             | 25-50%   | 50-75% | 75-100% | 100%+ |
| Modeled Impervious Cover Increase Anticipated for watershed  |                   | <b>X</b> |        |         |       |
| Notes: <b>The Sink Creek watershed contains Spring Lake, which serves as the headwaters of the Upper San Marcos River. Spring Lake and the Upper San Marcos River have major recreational sites, contain important cultural and archeological values, provide habitat for a number of threatened and endangered species, and are the basis for drinking water supply for towns downstream.</b> |                   |          |        |         |       |

**NEIGHBORHOODS – Where is the property located**

|                                  |                 |
|----------------------------------|-----------------|
| CONA Neighborhood(s):            | <b>N/A</b>      |
| Neighborhood Commission Area(s): | <b>Sector 2</b> |

**PARKS, PUBLIC SPACES AND FACILITIES –Availability of parks and infrastructure**

|  |                      |                       |
|--|----------------------|-----------------------|
|  | YES                  | NO                    |
| Will Parks and / or Open Space be Provided?  | <b>X</b>             |                       |
| Will Trails and / or Green Space Connections be Provided?  |                      | <b>TBD</b>            |
| <b>Parkland dedication will be determined at the time of preliminary or final plat.</b>                            |                      |                       |
| <b>Maintenance / Repair Density</b>  | Low<br>(maintenance) | High<br>(maintenance) |
| Wastewater Infrastructure  | <b>X</b>             |                       |
| Water Infrastructure   | <b>X</b>             |                       |
| Public Facility Availability   |                      |                       |
|  | YES                  | NO                    |
| Parks / Open Space within ¼ mile (walking distance)?   | <b>X</b>             |                       |
| Wastewater service available? <b>The developer will be required to extend wastewater service through the site.</b> | <b>X</b>             |                       |
| Water service available? <b>The developer will be required to extend water service through the site.</b>           | <b>X</b>             |                       |

**TRANSPORTATION** – Level of Service (LOS), Access to sidewalks, bicycle lanes and public transportation

|   |             | A   | B    | C    | D    | F |
|---|-------------|-----|------|------|------|---|
| Existing Daily LOS  | N LBJ Drive | X   |      |      |      |   |
| Existing Peak LOS   | N LBJ Drive |     | X    |      |      |   |
| Preferred Scenario Daily LOS  | N LBJ Drive |     |      |      | X    |   |
| Preferred Scenario Peak LOS   | N LBJ Drive |     |      |      |      | X |
|   |             | N/A | Good | Fair | Poor |   |
| Sidewalk Availability   |             | X   |      |      |      |   |
| <b>Sidewalks are required to be built as part of the development.</b> |             |     |      |      |      |   |
|   |             | YES |      | NO   |      |   |
| Adjacent to existing bicycle lane?                                    |             |     |      | X    |      |   |
| Adjacent to existing public transportation route?                     |             | X   |      |      |      |   |
| Notes: A Texas State bus route runs along N LBJ Dr                    |             |     |      |      |      |   |



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October 8, 2020

San Marcos City Council  
San Marcos City Hall  
630 E Hopkins  
San Marcos, TX 78661

*Via email: [councilmembers@sanmarcostx.gov](mailto:councilmembers@sanmarcostx.gov)*

Mayor Jane Hughson  
San Marcos City Hall  
630 E Hopkins  
San Marcos, TX 78666

*Via email: [jhughson@sanmarcostx.gov](mailto:jhughson@sanmarcostx.gov)*

***Re: Lookout Partners; Zone Case CZ-20-12 (Steen Road)***

Dear Mayor Hughson and Members of the San Marcos City Council,

I represent LOP/SM Properties, LLC on this zoning change from FD (Future Development) to SF-6 (Single Family) on this approximate 14.71 acre site out of the JW Berry Survey.

As you know, this Property has been in the temporary land use category of FD since annexation in 2015.

The Property is surrounded on the north by Agriculture Ranch District, which is owned by the mayor, on the south by SF-6, on the east by SF-6 and on the west by non-zoned (outside of City Limits) land use.

The Property needs to obtain original permanent zoning adopted in accordance with the State Zoning Enabling Act, Chapter 211 Local Government Code, before being platted and developed. Without permanent zoning the owner cannot develop the Property.

Obtaining original permanent zoning is an essential first step to the owner's being able to plat the Property for a productive use. My client began meeting with certain Planning and Zoning, Mayor, Council Members and Staff in March of 2018 to work collaboratively on a development plan that was compatible with the surrounding neighborhood and feasible given the available and planned utilities and road infrastructure.

After much consultation with the City Manager and the planning staff, an application for SF-6 was filed and recommended by your professional zoning staff as the recommended land use for compatibility with surrounding land uses and to promote the health safety and welfare of the community.

My client was absolutely shocked that the Planning Commission, in response to emotional and ill-reasoned objections, voted to deny the requested zoning. No justification was given for the denial and no advisory opinion on the sense of the Commission was passed on to you as a recommended alternative

zoning that you should adopt. The Commission has ill-served you in its obligations to this Council, which is required to designate a permanent land use for the Property at this time.

The Council cannot simply fail to override the Planning Commission recommendation of denial and leave the Property without permanent original zoning. State law will not allow it. You have had five years to initiate original permanent zoning on your own initiative. You chose not to do that. When my client visited with a number of you, the indication was that SF-6 was a reasonable request for permanent zoning. Your professional planning staff agreed and recommended the SF-6. The Property cannot simply stay in the emergency temporary classification of FD after the Property Owner has requested original permanent zoning.

In *Haynes v. City of Quanah*, 610 S.W.2d 842, 846 (Tex. Civ. App. -- Amarillo 1980, writ ref'd n.r.e.), the appellant property owners had been restricted to a temporary zoning classification for 9 years during which time the City made no effort to initiate, propose or enact a permanent zoning plan. Prior to the Appellants' acquisition of the property the City of Quanah had enacted a zoning ordinance, which stated, "[t]he City Planning and Zoning Commission shall, as soon as practicable after annexation of any territory to the City, institute proceedings on its own motion to give the newly annexed territory a permanent zoning [. . .]." *Id.* at 843. The court held that temporary zoning is for the purpose of allowing a city, for a reasonable period of time, to propose, finalize, and enact a permanent zoning plan for an annexed area. *Id.* at 846.

In reaching this holding, the *Quanah* court focused on the language within the city's zoning ordinance, and discussed how the city had "failed to proceed *as soon as practicable after annexation* to give the area in question permanent zoning [emphasis added]." *Id.* The City of San Marcos has a very similar code in Sec. 4.1.4.1 of its Land Development Code, which states, "As soon as practical following annexation, the Responsible Official shall, on the Responsible Official's own or upon application by property owners of the annexed area, initiate proceedings to establish appropriate zoning on the newly annexed territory." As with the Appellant property owners in *Quanah*, my client's property has been unreasonably confined to a temporary zoning classification for years. As with the Appellee City in *Quanah*, the City of San Marcos has a codified obligation to prevent that from happening.

My client is entitled to develop its' Property which has been annexed without a permanent zoning classification for five years.

The current application was noticed for Public Hearing at SF-6 classification. This notification is not sufficient to grant more intensive zoning. I would submit that there is not a zoning classification more restrictive than the SF-6 that could be approved by the City Council at this time that would not be arbitrary, capricious and unjustified by the reasonably available infrastructure and surrounding land uses.

We submit that the requested zoning is reasonable and appropriate and compatible with surrounding uses. We urge you to reject the arbitrary denial of this zoning classification for unmeritorious reasons dismissed by your own professional staff.

The Planning Commission's irrational denial of your professional staff's recommendation has put you in a difficult position. You only have three options. You can overrule their recommended denial by supermajority vote (6 of 7 members approving) and approve the SF-6 zoning; simply deny the request and leave the Property Un-zoned, which the law will no longer allow you to do; or adopt some more restrictive zoning classification that would be challengeable as an arbitrary, unreasonable, capricious and unjustified zoning classification.

We implore you to do the right thing and adopt the SF-6 zoning as requested by applicant and recommended by your planning staff.

Respectfully submitted,

*Terrence L. Irion*

Terrence L. Irion, Attorney for  
LOP/SM Properties, LLC

*w/ permission*  
*[Signature]*

TLI:kc

cc: Mike Siefert  
Bill Hinckley  
Eric Gomez



## PLANNING AND DEVELOPMENT SERVICES

9/04/2020

ZC-20-12

### Notice of Public Hearing Zoning Change Request “FD” Future Development to “SF-6” Single Family 6 Steen Road

ZC-20-12 (Steen Road) Hold a public hearing and consider a request by Mike Siefert, on behalf of Lookout Partners, L.P., for a Zoning Change from Future Development (FD) to Single Family 6 (SF-6), for approximately 14.71 acres out of the J.W. Berry Survey, located near N LBJ Drive and Steen Road. (T. Carpenter)

The San Marcos Planning and Zoning Commission will consider the above request at an upcoming public hearing to obtain citizen comments and will either approve or deny the request. This recommendation will be forwarded to the San Marcos City Council. Before making a final decision, the Council will hold a public hearing to obtain citizen comments. Because you are listed as the owner of property located within 400 feet of the subject property, we would like to notify you of the following public hearings and seek your opinion of the request:

- A public hearing will be conducted by the Planning and Zoning Commission via virtual meeting on **Tuesday, September 22** at 6:00 p.m. You may watch the public hearing on Grande channel 16 or Spectrum channel 10 or by using the following link: <http://sanmarcostx.gov/541/PZ-Video-Archives>. Or email [planninginfo@sanmarcostx.gov](mailto:planninginfo@sanmarcostx.gov) or call 512-393-8230 for information on how to participate in the public hearing.
- A public hearing will be held at the City Council Meeting on **Tuesday, October 20, 2020** at 6:00 p.m. in the Council Chambers in City Hall, 630 East Hopkins. If current orders related to COVID-19 are extended, virtual meeting information will be provided at the following website: <https://sanmarcostx.gov/421/City-Council-Videos-Archives>. Or email [citizencomments@sanmarcostx.gov](mailto:citizencomments@sanmarcostx.gov) or call 512-393-8090 for information on how to participate in the public hearing.

Due to the State Disaster Declaration enacted by the Governor, Public Hearings will be held in a virtual meeting. All interested citizens are invited to watch or participate in the public hearing by the means described above. If you cannot participate in the virtual public hearing of the Planning and Zoning Commission or the City Council, but wish to comment, you may write to the below address. Your written comments will be given to the Planning & Zoning Commission and City Council if they are received before 12 PM on the day of the meeting.

Planning and Development Services  
630 East Hopkins  
San Marcos, TX 78666  
[planninginfo@sanmarcostx.gov](mailto:planninginfo@sanmarcostx.gov)

For more information regarding this request, contact the case manager, **Tory Carpenter**, at **512.393.8234**. When calling, please refer to case number **ZC-20-12**

As of the date of this notice, there are no other means of participating in the public hearing. However, please check for updates on the City's website at: [www.sanmarcostx.gov](http://www.sanmarcostx.gov) to see if other means of participating in the public hearing become available.

*The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 512-393-8074 or sent by e-mail to [ADArequest@sanmarcostx.gov](mailto:ADArequest@sanmarcostx.gov)*

CITY HALL • 630 EAST HOPKINS • SAN MARCOS, TEXAS 78666 • 512.393.8230 • FACSIMILE 855.759.2843  
SANMARCOSTX.GOV

P+Z 09/22/20

**From:** [REDACTED]  
**Sent:** Wednesday, September 16, 2020 4:59 PM  
**To:** Planning Info  
**Subject:** [EXTERNAL] Opposition to SF-6 Zoning at Steen Road

To Whom it May Concern,

Our names are Diane and Randall Osborne and we live at 1 Timbercrest Street here in San Marcos . We are aware of the proposal for zoning change from FD to SF-6 for Steen Road located off N. LBJ. We want to express our strongest opposition to this zoning change. We have two fundamental reasons for this.

First, Steen Road access off N LBJ is extremely dangerous. LBJ is narrow and crests a hill right at Steen Road. We hear near miss accidents constantly on this portion of the road - which is already very heavily trafficked with vehicles, buses and delivery trucks. We feel that added access to a development of houses from Steen Road would place additional strain on this already dangerous and highly trafficked portion of LBJ.

Second, we have experienced significant runoff damage to our home and our property in the time that we have owned it - we bought the house in 2002 - as a result of development already approved by the city (such as the Hillside Ranch Cottages). For several years after this development and the clearing of land behind us for development, we have experienced significant flooding as a result of changes to runoff patterns. To date, we have spent over \$30,000 out of pocket for alterations to the back of our property to further shunt this torrential flow away from the back of our house. This has been at our own expense because - according to the City - it is flooding and not their responsibility and - according to our insurance - it is runoff and not flooding and, therefore, not covered by any flooding insurance. We encourage any of you who are uncertain about this to stop by our house during a heavy rain and watch the waves of water come flowing down from up LBJ and gush away from our house because of the concrete work we have had to have done.

Any additional development in this area will alter these patterns, yet again, and result in significant damage to our property and, possibly, to our home.

Sincerely,

Randall and Diane Osborne  
1 Timbercrest St.  
home phone: 512-754-7295

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**Burrell, Cesly**

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**From:** Steven Aycock  
**Sent:** Monday, September 21, 2020 8:13 PM  
**To:** Planning Info  
**Subject:** [EXTERNAL] Fwd: Steen Rd Development

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Planning and Zoning Commission

I have serious reservations concerning the Steen Road Zoning Change.

While I am not against development it must be done in a manner that takes many factors into consideration.

First, if the developer uses the SF6 zoning designation to place a house on 6,000 square foot lots (as seems to be the standard currently in San Marcos) the integrity of Tanglewood would be irreparably damaged. Having a high density neighborhood with only one point of egress would leave the residents of Timbercrest and Oak Ridge with an endless stream of traffic in their backyards.

Second, if this property is developed at the SF6 permissible 6,000 square foot lot level it would result in a very high level of impermeable surface over the 15.28 acres. This could potentially result in unacceptable levels of runoff into the Sink Creek drainage as well as possibly affecting homes on the bottom of Oak Ridge.

Finally, it is impossible to fully evaluate such a zoning change without seeing the developer's plans. If a one to two house per acre development is proposed, this might be acceptable from a neighborhood integrity and flooding perspective. If, however, a development of fifty or more homes is planned for this 15.28 acres I am very opposed and feel it would damage both the neighborhood and the Sink Creek drainage leading into the San Marcos River headwaters.

In the absence of a plan of development I oppose the zoning change.

Sincerely,

Steven M Aycock DDS

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## Burrell, Cesly

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**From:** Mattingly, Shannon  
**Sent:** Monday, September 21, 2020 3:36 PM  
**To:** Hernandez, Amanda; Burrell, Cesly  
**Subject:** FW: [EXTERNAL] FW: case number ZC-20-12

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**From:** [REDACTED]  
**Sent:** Monday, September 21, 2020 3:31 PM  
**To:** Planning Info <PlanningInfo@sanmarcostx.gov>  
**Subject:** [EXTERNAL] FW: case number ZC-20-12

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**From:** [REDACTED]  
**To:** "[planninginfo@sanmarcostx.gov](mailto:planninginfo@sanmarcostx.gov)"  
**Cc:**  
**Sent:** Sunday September 20 2020 9:03:09PM  
**Subject:** case number ZC-20-12

Thanks for letting me express my wishes concerning the P & Z meeting scheduled for Tuesday September 22, 2020 case number ZC-20-12

I urge you to vote no on this request. Making this zoning change would eliminate all the wild life on this parcel of land. This is one of the last places in San Marcos where the wild life can live without being disturbed.

I urge you to vote no on this request. Changing the density to 6 homes per acre would spoil the beauty of this property forever. All the developments in this area has no more than 4 homes per acre.

I urge you to vote no on this request. Putting this many houses in this area would overload the water system. We are having some pressure problems now.

I urge you to vote no on this request. Putting this many houses in this area would overload the road system. There is only one road in and 1 road out. In case of fire, the fire fighting equipment would have a real problem coming into this project. LBJ street is very busy now. I don't think it could handle the traffic generated by this increase in density.

I am not opposed to growth and property development. I am opposed to any density more than 4 homes per acre. I don't like the idea of leaving it up to the developer; He has no vested interest, he will be here today and gone by tomorrow.

George Gilbert 15 Timbercrest San Marcos, Tx 512-396-2313

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## Burrell, Cesly

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**From:** Saunders, Jane M  
**Sent:** Sunday, September 20, 2020 9:26 PM  
**To:** Planning Info  
**Subject:** [EXTERNAL] Public Hearing September 22, 2020 Steen Road

**Importance:** High

Dear planning folks, I would like to participate in this hearing if at all possible. I live at 7 Timbercrest Street and am concerned that a congested neighborhood is going to be crammed into our peaceful and serene little community. We have already been **overtaken all around us by myriad students' families buying homes so that they can live in them while at the university** and the regular disruptions from those living near or on Craddock. I am worried we will see **more encroachment** with the introduction of homes built on small lots. I am also **worried about the infrastructure stresses** – already at a breaking point in terms of mobile phone service and the like – in an undeveloped property, as well as the disruption to our lives [traffic, noise, **particularly after living through the sewage/water switch out in our neighborhood** just a couple of years back].

This diminishes the hard work those of us who live in San Marcos permanently [and who have purchased and maintained our homes with plans to stay long-term] and seems likely to devalue our investments. Given that we are near the Sierra Ridge and the Spring Lake neighborhoods, one would think that builders might seek bigger footprints for homes to fit in with what is already here rather than building as many homes as possible in a tiny space. Is there no concern about environmental impact or disruption of the creek behind the zoned property?

I would like more information about how I can attend the meeting, including ZOOM information, times, and process.

I appreciate the guidance,

jane

Jane M. Saunders, Ph.D.  
Associate Professor, Literacy  
**I'm an ALLY, are you?**

Texas State University  
Department of Curriculum and Instruction  
601 University Drive  
San Marcos, TX 78666

Web page: <http://jmsaunders.wp.txstate.edu/>

[830-481-3838](tel:830-481-3838) (m.)  
[512-245-1512](tel:512-245-1512) (o.)

Kindness in words creates confidence. Kindness in thinking creates profoundness. Kindness in giving creates love.  
-- Lao Tzu

If there be any truer measure of a man than by what he does, it must be by what he gives.  
--Robert South

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## **Burrell, Cesly**

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**From:** [REDACTED]  
**Sent:** Monday, September 21, 2020 11:16 AM  
**To:** Parrish, Will; Planning Info  
**Cc:** [REDACTED]  
**Subject:** [EXTERNAL] Proposed Zoning Change ZC-20-12 (Steen Road)

Mr. Parrish -

As I mentioned in my telecon with you today, I have attempted to contact your Tory Carpenter, who I understand is the case manager & will not be back in the office until mid-October. I would appreciate if you could pass my thoughts regarding this proposed zoning change to the responsible person or persons regarding this issue prior to the next scheduled Planning & Zoning meeting.

My family has lived on Oak Ridge Drive for over 20 years and we now find is within 400 feet of the area of the proposed zoning change. I have several concerns regarding this proposed change:

- \* Infrastructure - We would like assurances from the city and the developer that the infrastructure can truly support the proposed development. This includes the current water/sewer/drainage systems, as well as the electric and the 3rd party communication systems. With more residents in the area now working remotely due to the current pandemic, we have noticed a decrease in the reliability of the internet.
- \* Proposed Potential Density of Development - Our neighborhood is an established one and we worry that the proposed development would bring excessive noise and all the other issues that may occur if the development maximizes the number of houses which would be allowed by the SF-6 designation. When additional student apartments were built between Holland Street and Elm Hill Ct, we also noticed an increase in nighttime noise from the direction of these apartments. We also remember the noise and traffic issues when high density housing was allowed to be built off of Craddock between N. LBJ and Old Ranch Road 12 over a decade ago.
- \* Traffic - As shown on the plat provided in the city's 04Sep20 letter, that notified us of the proposed change, it appears the only entrance and exit to the area would be on N. LBJ between Oak Ridge/Nichols Drives and Timbercrest. N. LBJ in this area is very narrow. This is also pretty much a blind hill and we already notice the heavy traffic between Highland and Craddock from people currently using N. LBJ. We assume a lot of this N. LBJ traffic is from the student apartments on Craddock and Old Ranch Road 12 areas, either going to the university, or to avoid going through downtown to get to IH35 or the other side of San Marcos. This traffic concern also includes many personal observations of drivers failing to stop at the 4-way stop sign at the Oak Ridge/Nichols Drive intersection, as well as the stop sign on N. LBJ at the Timberwood Trl intersection. It is already dangerous to turn on to N. LBJ from Oak Ridge or Elm Hill Ct. or Timberwood Trl. because of the potential for accidents due to distracted drivers failing to stop at the stop signs. We cannot fathom what the traffic would be if the Steen Rd. development builds the maximum number of houses allowed by the SF-6 designation.

Thank you in advance.

Mary Ann and Robert Moerke  
110 Oak Ridge Drive  
San Marcos, TX 78666

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## **Burrell, Cesly**

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**From:** Dan Caldwell  
**Sent:** Tuesday, September 22, 2020 9:37 AM  
**To:** Planning Info  
**Subject:** [EXTERNAL] ZC-20-12 Steen Road

Ms. Burrell,

Thank you for responding to my email request. My comments are as follows:

To the Honorable Commissioners:

My name is Dan Caldwell. My wife and I live at 3 Timbercrest, San Marcos Texas. We have lived in San Marcos for the last five years, having relocated from Florida.

We both love the Timbercrest area and the Tanglewood subdivision. The entire reason that we moved into this area is because it is relatively quiet and the neighborhoods are well established, and the homes are older, solid and well built.

We are being asked our opinion on a zoning change for the property behind our neighborhood from Future Development to Single Family 6. The reason I am opposed to any development in this area is simply due to lack of information.

I am an attorney, so I am well aware that development is what happens to vacant land, and the law always favors use of land over letting it stand vacant. However, in this case we have very little information on what may be constructed. While I have been able to take a cursory look into Lookout Partners (the party requesting the zoning change), I still have no idea what kind of development they have planned. Their website shows past developments of beautiful homes similar in scale and design to what already exists on Timbercrest, Oakridge and Tanglewood. But I still have many unanswered questions.

First, no land plans or concept site plan of any type has been provided to accompany this request for the zoning change. Therefore, my neighborhood and I are left to wonder, what will be built? Will a small neighborhood that fits in with the existing neighborhood be built, or will space be maximized with anywhere from sixty to eighty new homes be crammed in behind us, greatly increasing noise, congestion and traffic? Just because Lookout Partner's website highlights upscale developments, I don't have the ability to verify what kind of development they actually specialize in, and I have no idea what they plan to build here.

Has a traffic impact study been conducted? LBJ is already a fairly busy road, as many locals tend to use it as a way to go around downtown rather than drive through Hopkins. Several times a day I already hear the loud engines of busses, and the heavy base of private vehicles with their stereo turned up too loudly. How much increased noise and congestion will be created by turning Steen Road into the only entrance and exit into what could be a very large development? How will that impact safety for the motoring public?

Has a hydrology study been done to determine what impact the development will have on drainage and water flow? Will it be increased? Will my and my neighbors homes flood or experience significant erosion due to increased water runoff that occurs whenever one paves over vacant land? Will my neighbors and I be subject to losing part of our backyards to eminent domain for the installation of curb and gutter drainage to the new Steen Road?

Has an environmental study been conducted? What wildlife will be affected and how?

If a project is planned, when is it scheduled to begin, and when is it scheduled to end?

Ultimately as a local property owner who resides within four hundred feet of this development, I must object to the zoning change and development. I cannot promise that I would be in agreement even if all of my above questions were answered. However, I definitely have to object based on the lack of information.

Thank you for your time.

Best Regards,

Dan Caldwell  
3 Timbercrest  
San Marcos, TX 78666

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## **Burrell, Cesly**

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**From:** Lee Stern  
**Sent:** Friday, September 18, 2020 4:04 PM  
**To:** Planning Info  
**Subject:** [EXTERNAL] to be read, please, at ZC-20-12 meeting

Re ZC-20-12

We own land directly adjacent to the parcel being considered for rezoning. We object to rezoning this property for development for esthetic, environmental, and economic reasons.

The land is in the middle of a well-established neighborhood of single-family homes on large lots, called Tanglewood. This is still a fairly quiet residential area, though it was much quieter before Hillside Ranch II was built.

Hillside Ranch II's proponents argued that, although Tanglewood is zoned single family residential, apartments were already standing nearby, literally in shouting distance. In other words, the undesirable is already close; let us bring it closer. If the parcel in question is developed, next someone will want to build a gas station or convenience store on the adjoining parcel on LBJ. And it might then be allowed, if a poll of short-termers seems to support allowing a store close by.

A new development will be cheaper housing, much of which is been bought by people who live elsewhere, for their children to occupy for a few years while attending school. Afterward, it becomes rental property. This was the case with the house at 116 Oak Ridge, whose owners live in El Paso. After their students (and their friends) moved out, the house was rented to MANY members of a fraternity, in clear violation of city ordinances. On weekends, their visitors' cars lined the curbs for a block in either direction. Frequently, the cars were left for days on end, blocking fire hydrants, mail and other deliveries, and refuse collection.

Students and renters are short term, and most are not invested in their communities. Drive down Craddock to see examples of their sense of community or concern for their surroundings. Walk along LBJ, and ask homeowners how often their mailboxes have been run over, or their yards plowed by out-of-control vehicles.

San Marcos doesn't need more rentals. The future growth of university towns has never been more in question. Please see this article from The New York Times (link follows).

This parcel is unique and challenging terrain. It's very steep, and would require drastic digging and leveling. The area is riddled with holes, which may indicate a honeycomb of natural drains leading to the aquifer. Runoff from impervious surfaces would flow to Sink Creek.

The worst-case scenario for development of this lot would be for a builder to start, and not finish the project (like the long-delayed Ella or Vie Lofts apartments at Chestnut and LBJ) or to finish the project but leave unresolved issues (like the \$6 million in foundation repairs already needed to the new Ingram Hall on the Texas State campus, also built on similarly sloping terrain).

This town has seen its share of bad faith and poor planning from developers. For example, Hillside Ranch II was built so close to North LBJ that future widening or realignment of this street will most likely be taken from homeowners' lots on the opposite side of the street.

Not every "vacant" area needs to be filled with construction. The parcel under consideration would make a wonderful addition to a green belt. If the area became a park, or simply a walking trail open to the public, the slope toward Sink Creek would be a beautiful and valuable addition to the community. It would enhance the peace and beauty of its surroundings. It wouldn't require the infrastructure needed to add more buildings.

Sincerely,

Lee Elliott Stern

Oak Ridge Drive

<https://www.nytimes.com/2020/06/28/us/coronavirus-college-towns.html?searchResultPosition=8>

**'We Could Be Feeling This for the Next Decade': Virus Hits College Towns**

Opening bars and bringing back football teams have led to new outbreaks. Communities that evolved around campuses face potentially existential losses in population, jobs and revenue.

By Shawn Hubler

PRINT EDITION **For Homes Of Colleges, Bleak Future May Await** June 29, 2020, Page A6

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# ZONING CHANGE, OVERLAY OR ESTABLISHMENT OF A HISTORIC DISTRICT/LANDMARK APPLICATION



Updated: October, 2019

## CONTACT INFORMATION

|                             |  |                         |  |
|-----------------------------|--|-------------------------|--|
| Applicant's Name            | Mike Siefert                             | Property Owner          | LOP/SM Properties LLC                    |
| Company                     | Lookout Development Group                | Company                 | Lookout Partners, L.P.                   |
| Applicant's Mailing Address | 1789 S. Bagdad Rd #104 Leander, TX 78641 | Owner's Mailing Address | 2370 Rice Blvd. Ste 200 Houston TX 77005 |
| Applicant's Phone #         | 512.690.4322                             | Owner's Phone #         | 713.524.5263                             |
| Applicant's Email           | mike@thelookoutgroup.com                 | Owner's Email           | dkg@dkga.com                             |

## PROPERTY INFORMATION

Subject Property Address(es): Steen Rd., San Marcos, TX 78666

Legal Description: Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision \_\_\_\_\_

Total Acreage: 12.99 Tax ID #: R 13098, 13097

Preferred Scenario Designation: Existing Neighborhood Existing Zoning: FD

Existing Land Use(s): Vacant Land

## DESCRIPTION OF REQUEST

Proposed Zoning District(s): SF-6

Proposed Land Uses / Reason for Change: We request SF-6 zoning for R13098 and R13097 to match the SF-6 zoning already in place on other adjacent property owned by the same entity (R13100, R13099)

## AUTHORIZATION

*I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.*

Filing Fee\* \$1,057 plus \$100 per acre Technology Fee \$13 MAXIMUM COST \$3,013  
 \*Existing Neighborhood Regulating Plan Included.

Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

**APPLY ONLINE – [WWW.MYGOVERNMENTONLINE.ORG/](http://WWW.MYGOVERNMENTONLINE.ORG/)**

PROPERTY OWNER AUTHORIZATION

I, David K. Gibbs (owner name) on behalf of  
Lookout Partners, L.P. (company, if applicable) acknowledge that I/we  
am/are the rightful owner of the property located at  
Steen Road, San Marcos, TX 78666 (address).

I hereby authorize Mike Siefert (agent name) on behalf of  
Lookout Development Group (agent company) to file this application for  
Zoning Change (application type), and, if necessary, to work with  
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner:  Date: 3-25-2020

Printed Name, Title: David K Gibbs, General Partner

Signature of Agent: \_\_\_\_\_ Date: 3-25-2020

Printed Name, Title: Mike Siefert, President

Form Updated October, 2019

**AGREEMENT TO THE PLACEMENT OF NOTIFICATION SIGNS  
AND ACKNOWLEDGEMENT OF NOTIFICATION REQUIREMENTS**

The City of San Marcos Development Code requires public notification in the form of notification signs on the subject property, published notice, and / or personal notice based on the type of application presented to the Planning Commission and / or City Council.

- Notification Signs: if required by code, staff shall place notification signs on each street adjacent to the subject property and must be placed in a visible, unobstructed location near the property line. It is unlawful for a person to alter any notification sign, or to remove it while the request is pending. However, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements. ***It shall be the responsibility of the applicant to periodically check sign locations to verify that the signs remain in place had have not been vandalized or removed. The applicant shall immediately notify the responsible official of any missing or defective signs. It is unlawful for a person to alter any notification sign, or to remove it while the case is pending; however, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements.***
- Published Notice: if required by code, staff shall publish a notice in a newspaper of general circulation in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be published it may be at the expense of the applicant. The renotification fee shall be \$91 plus a \$13 technology fee.***
- Personal Notice: if required by code, staff shall mail personal notice in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be mailed it may be at the expense of the applicant. The renotification fee shall be \$91 plus a \$13 technology fee.***

*I have read the above statements and agree to the required public notification, as required, based on the attached application. The City's Planning and Development Services Department staff has my permission to place signs, as required, on the property and I will notify City staff if the sign(s) is/are damaged, moved or removed. I understand the process of notification and public hearing and hereby submit the attached application for review by the City.*

Signature: 

Date: 3/25/20

Print Name: David Gibbs

Form Updated October, 2019



5/3/22  
SAN MARCOS TITLE CO.  
GF # 23082

**Notice of confidentiality rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your Social Security number or your driver's license number.**

**WARRANTY DEED  
WITH VENDOR'S LIEN**

Bk Vbl Pg  
06024415 OPR 2987 707

THE STATE OF TEXAS :  
COUNTY OF HAYS :

KNOW ALL MEN BY THESE PRESENTS:

THAT **GEORGE W. GILBERT**, a married man, owning and claiming other property as homestead, hereinafter referred to as "Grantor", for the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration in hand paid by **LOP/SM PROPERTIES, LLC**, a Texas limited liability company, whose address is 2370 Rice Boulevard, Suite 2700, Houston, Texas 77005, hereinafter referred to as "Grantee", the receipt and adequacy of which is hereby forever acknowledged, and in consideration of the payment by **LOOKOUT PARTNERS, L.P.**, a Texas limited partnership ("Note Holder") to Grantor of that portion of the purchase price of the hereinafter described property which is represented by the Promissory Note referred to below, Grantor hereby transfers, sets over, assigns and conveys unto Note Holder, its successors and assigns, the vendor's lien and superior title hereinafter retained, as security for the Promissory Note, together with all such other rights, titles, liens or claims which Grantor may hold in said property as security for any part of the purchase price thereof; provided, however, that there shall be no recourse against Grantor for the payment of said Note, and this Promissory Note of even date herewith is in the original principal sum of \$500,000.00 bearing interest, as therein provided, and payable to the order of Note Holder, the payment of which Promissory Note is secured by the Vendor's Lien conveyed herein and the Superior Title reserved and retained by Note Holder and is additionally secured by Deed of Trust of even date herewith from the Grantee herein to Richard L. Spencer, Trustee, conveying unto said Trustee the hereinafter described real property, has GRANTED, SOLD, and CONVEYED and by these presents does GRANT, SELL and CONVEY, subject to the matters set forth hereunder, unto the said Grantee all that certain real property in Hays County, Texas described as follows:

Two (2) tracts out of the J. W. Berry Survey, Abstract 64, Hays County, Texas, and being described as 14.71 acres and 2.21 acres in **Exhibit "A"** and **"B"** attached hereto and made a part hereof for all purposes.

This conveyance is made and accepted subject to any and all valid and subsisting restrictions, easements, rights of way, reservations, maintenance charges together with any lien securing said maintenance charges, declarations, outstanding interests and encumbrances, zoning laws, ordinances of municipal and/or other governmental authorities, conditions and covenants, if any, applicable to and enforceable against the above-described property as shown by the records of the County Clerk of



STATE OF TEXAS  
COUNTY OF HAYS

JOHN W. BERRY SURVEY

EXHIBIT "A"

A DESCRIPTION OF A 14.71 ACRE TRACT SITUATED IN THE JOHN W. BERRY SURVEY, ABSTRACT NUMBER 64, HAYS COUNTY, TEXAS, BEING COMPRISED OF A CALLED 5.00 ACRE TRACT DESCRIBED AS TRACT 1 IN VOLUME 449, PAGE 892, DEED RECORDS OF HAYS COUNTY, TEXAS, A CALLED TRACT 2 IN VOLUME 449, PAGE 892, DEED RECORDS OF HAYS COUNTY, TEXAS, AND A CALLED 3.00 ACRE TRACT DESCRIBED IN VOLUME 1734, PAGE 862, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

**BEGINNING** at 1 inch iron pipe found for an interior corner of a called 393.66 acre tract conveyed to J. Hughson in Volume 148, Page 139, Deed Records of Hays County, Texas, for the west corner of a called 1 acre tract in Volume 60, Page 96, Deed Records of Hays County, Texas, and for the north corner of said 5.00 acre tract and the herein described tract;

**THENCE** with the southwest line of said 393.66 acre tract, **South 44°55'06" East**, a distance of **888.41 feet**, (called South 44°53' East, 890 feet), to a ½ inch iron rod with cap set northwest line of Lot 6, Tanglewood Section 4, recorded in Volume 1, Pages 123 – 124, Plat Records of Hays County, Texas, for an interior corner of said 393.66 acre tract and for the east corner of said Tract 2 and the herein described tract, from which ½ inch iron pipe found for the north corner of said Lot 6 bears North 44°58'12" East, a distance of 69.08 feet (called South 44°23' West);

**THENCE** with the northwest line of said Tanglewood Section 4 the following ten (10) courses:

- 1) **South 44°58'12" West**, a distance of **41.54 feet** (called South 44°46' West), to a ½ inch iron pipe found,
- 2) **South 44°53'12" West**, a distance of **31.03 feet** (called South 44°46' West, 30.96 feet), to a ½ inch iron pipe found,
- 3) **South 44°33'05" West**, a distance of **69.34 feet** (called South 44°15' West, 69.40 feet), to a ½ inch iron pipe found,
- 4) **South 44°44'54" West**, a distance of **69.07 feet** (called South 44°15' West, 69.27 feet), to a ½ inch iron pipe found,
- 5) **South 38°28'34" West**, a distance of **20.05 feet** (called South 39°04' West, 19.92 feet), to a ½ inch iron pipe found,
- 6) **South 39°12'25" West**, a distance of **89.19 feet** (called South 39°04' West, 89.20 feet), to a ½ inch iron pipe found, for the north corner of a called 0.263 acre tract conveyed to Alan Groeger in Volume 831, Page 179, Official Public Records of Hays County, Texas, for the west corner of Lot 3,
- 7) **South 39°15'31" West**, a distance of **80.13 feet** (called South 39°04' West, 80.18 feet), to a ½ inch iron pipe found for the west corner of said 0.263 acre tract and for the north corner of Lot 2,
- 8) **South 40°10'16" West**, a distance of **12.42 feet** (called South 39°04' West, 12.50 feet), to a ½ inch iron pipe found,
- 9) **South 45°19'48" West**, a distance of **87.33 feet** (called South 44°50' West, 87.57 feet), to a ½ inch iron pipe found,
- 10) **South 44°49'41" West**, a distance of **100.17 feet** (called South 44°50' West, 100.00 feet), to a ½ inch iron pipe found for the west corner of Lot 1 and for the north corner of Lot 6 of said Tanglewood Section 3 and for an angle point in the southeast line of the herein described tract;

**THENCE** with the northwest line of said Tanglewood Section 3, **South 45°12'26" West**, a distance of **110.75 feet** (called South 44°50' West, 110.60 feet), to a ½ inch iron rod found for the east corner of a 40 foot road, and for the south corner of a said Tract 2 and the herein described tract;

**THENCE** with the northeast line of said 40 foot road, **North 45°12'21" West**, passing at a distance of 29.93 feet a ½ inch iron rod found for the south corner of said 3.00 acre tract, passing at a distance of 284.29 feet a ½ inch iron rod found for the west corner of said 3.00 acre tract and continuing for a total distance of **503.81 feet** (called South 45°27' West), to a ½ inch iron pipe found for the east corner of Lot 6, of said Tanglewood Section 2, for the north corner of said old 40 foot road and for an angle point in the southwest line of the herein described tract;

**THENCE** with the northeast line of said Tanglewood Section 2, **North 45°20'01" West**, a distance of **402.96 feet** (called North 45°31' West, 402.60 feet), to a ½ inch iron rod with cap set in the southeast line of said 393.66 acre tract, for the north corner of Lot 4 of said Tanglewood Section 2 and for the west corner of said Tract 2 and the herein described tract, from which a ¾ inch iron pipe found for the west corner of said Lot 4 bears South 44°42'26" West, a distance of 200.00 feet (called South 44°32' West, 200.00 feet);

**THENCE** with the common line of said 393.66 acre tract and the herein described tract the following two (2) courses:

- 1) **North 44°42'26" East**, a distance of **280.01 feet** (called North 44°42' West, 280.22 feet), to a 1 inch iron pipe found for the west corner of said 5.00 acre tract,
- 2) **North 44°53'00" East**, a distance of **435.40 feet** (called North 44°35' East, 435.6 feet), being the **BEARING BASIS** herein, to the **POINT OF BEGINNING** and containing **14.71 acres** of land.

#### EXHIBIT "B"

A DESCRIPTION OF A 2.21 ACRE TRACT SITUATED IN THE JOHN W. BERRY SURVEY, ABSTRACT NUMBER 64, HAYS COUNTY, TEXAS, BEING COMPRISED OF A CALLED 2.286 ACRE TRACT DESCRIBED IN VOLUME 586, PAGE 179, REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS AND A CALLED 0.648 ACRE TRACT DESCRIBED IN VOLUME 334, PAGE 673, DEED RECORDS OF HAYS COUNTY, TEXAS, SAVE AND EXCEPT A 0.10 ACRE APPARENT RIGHT-OF-WAY TAKE FOR NORTH L.B.J. DRIVE, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

**BEGINNING** at a 5/8 inch iron pipe found in the northeast right-of-way line of North LBJ Drive (R.O.W. Varies), in the southeast line of said 2.286 acre tract, for the west corner of Lot 1, Tanglewood Section 3, recorded in Volume 1, Pages 111 – 112, Plat Records of Hays County, Texas, for the south corner of the herein described tract;

**THENCE** with said northeast right-of-way line of North LBJ Drive, **North 42°49'25" West**, a distance of **192.59 feet**, (called North 42°38' West), to a ½ inch iron rod with cap set in the southeast right-of-way line of Steen Road (30' R.O.W.), in the northwest line of said 0.684 acre tract and for the west corner of the herein described tract, from which a ½ inch iron rod found for the south corner of Lot 10, Tanglewood Section 2, recorded in Volume 1, Pages 57 – 58, Plat Records of Hays County, Texas bears North 42°49'25" West, a distance of 30.17 feet, (called North 42°38' West),

**THENCE** with said southeast right-of-way line of Steen Road, **North 41°06'58" East**, a distance of **462.93 feet**, (called North 40°32'45" East, 462.49 feet), to a ½ inch iron rod with cap set in the southwest line of said 40 foot road, for the corner of said 2.286 acre tract and the herein described tract;

**THENCE** with the southwest line of said 40 foot road and the northeast line of said 2.286 acre tract, **South 45°12'21" East**, a distance of **220.44 feet**, (called South 46°27' East, 221.2 feet), to a ½ inch iron rod with cap set in the northwest line of Lot 5 of said Tanglewood Section 3, for the east corner of said 2.286 acre tract and the herein described tract, from which a ½ inch iron rod found in northwest line of said Lot 5 bears, North 44°28'43" East, a distance of 40.00 feet, (called North 44°23' East)

**THENCE** with the northwest line of said Tanglewood Section 3 the following five (5) courses:

- 1) **South 44°28'43" West**, a distance of **45.35 feet** (called South 44°23' West), to a 1 inch iron pipe found,
- 2) **South 44°33'07" West**, a distance of **100.02 feet** (called South 44°23' West, 100.00 feet), to a 1 inch iron pipe found,
- 3) **South 44°37'00" West**, a distance of **99.99 feet** (called South 44°23' West, 100.00 feet), to a 1 inch iron pipe found,
- 4) **South 44°37'00" West**, a distance of **100.00 feet** (called South 44°23' West, 100.00 feet), to a ½ inch iron rod with cap set,
- 5) **South 44°37'00" West**, a distance of **124.65 feet** (called South 44°23' West, 124.65 feet), to the **POINT OF BEGINNING** and containing **2.21 acres** of land.

I, Shawn T. Ash, do hereby certify that this description and associated exhibit were prepared from a survey performed under my direction during April 2006, and is true and correct to the best of my knowledge and belief. At the request of the client only the exterior perimeter of the combined tracts cited herein were surveyed. There may be improvements, utilities or fencing in the interiors of these tracts not shown hereon. This survey is not intended to subjugate the subdivision process of the City of San Marcos and Hays County, Texas.



Shawn T. Ash  
Registered Professional Land Surveyor  
No. 5687 State of Texas



04/12/06  
Date

Attachments: Exhibit of 14.71 acre tract and a 2.21 acre tract  
Job: 06-1194

Filed for Record in:  
Hays County  
On: Aug 15, 2006 at 02:44P  
Document Number: 06024415  
Amount: 32.00  
Receipt Number - 153744  
By:  
Olga Martinez, Deputy  
Lee Carlisle, County Clerk  
Hays County

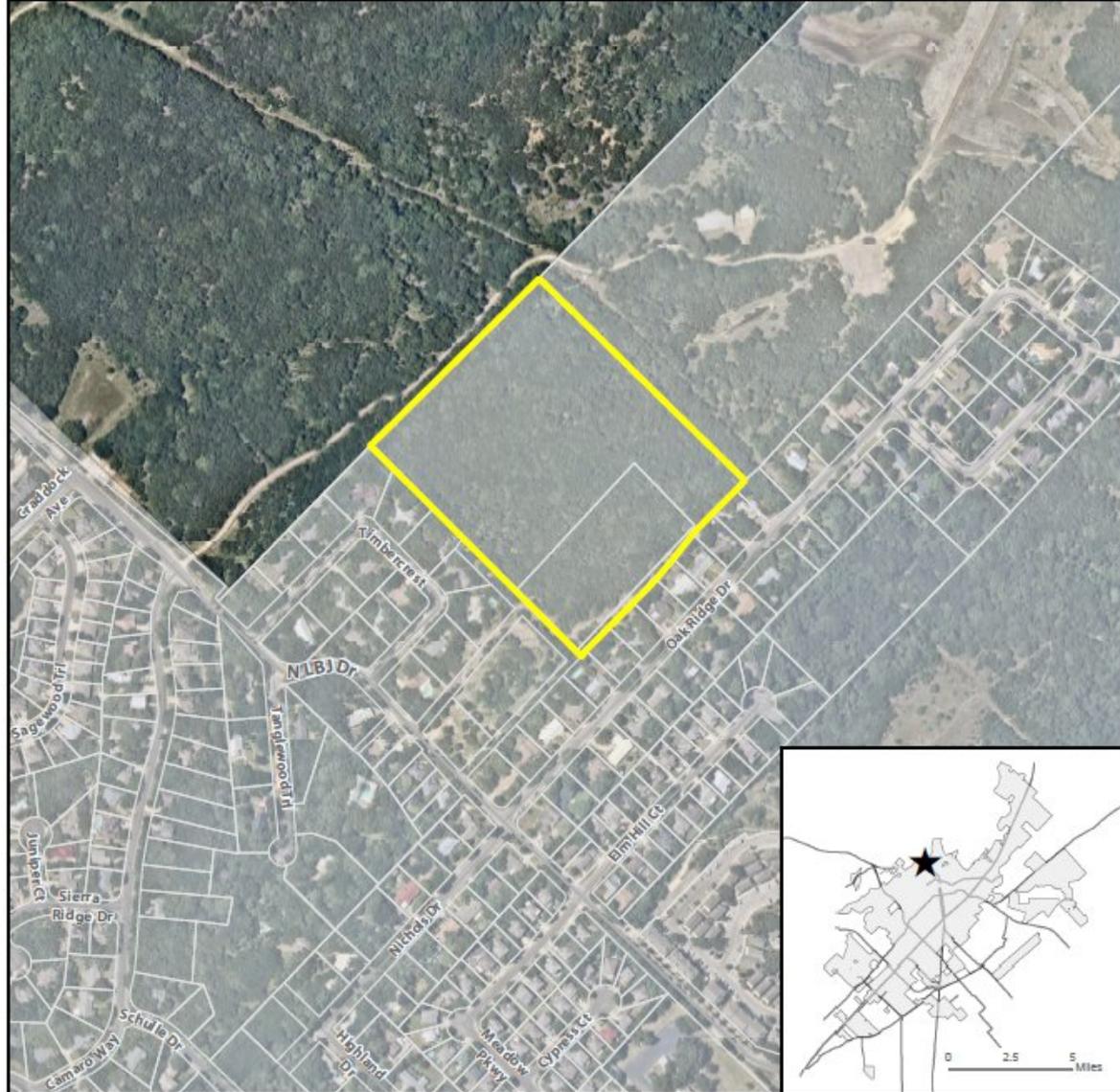
## ZC-20-12 (Steen Road)

Hold a public hearing and consider a request by Mike Siefert, on behalf of Lookout Partners, L.P., for a Zoning Change from Future Development (FD) to Single Family 6 (SF-6), for approximately 14.71 acres out of the J.W. Berry Survey, located near N LBJ Drive and Steen Road.  
(T. Carpenter)

## Location:

- Approximately 14.71 acres
- **Current Configuration:**  
Vacant land
- Surrounding uses include:
  - Single-family residences
  - Vacant Land
- Located within a Existing Neighborhood on the Preferred Scenario Map

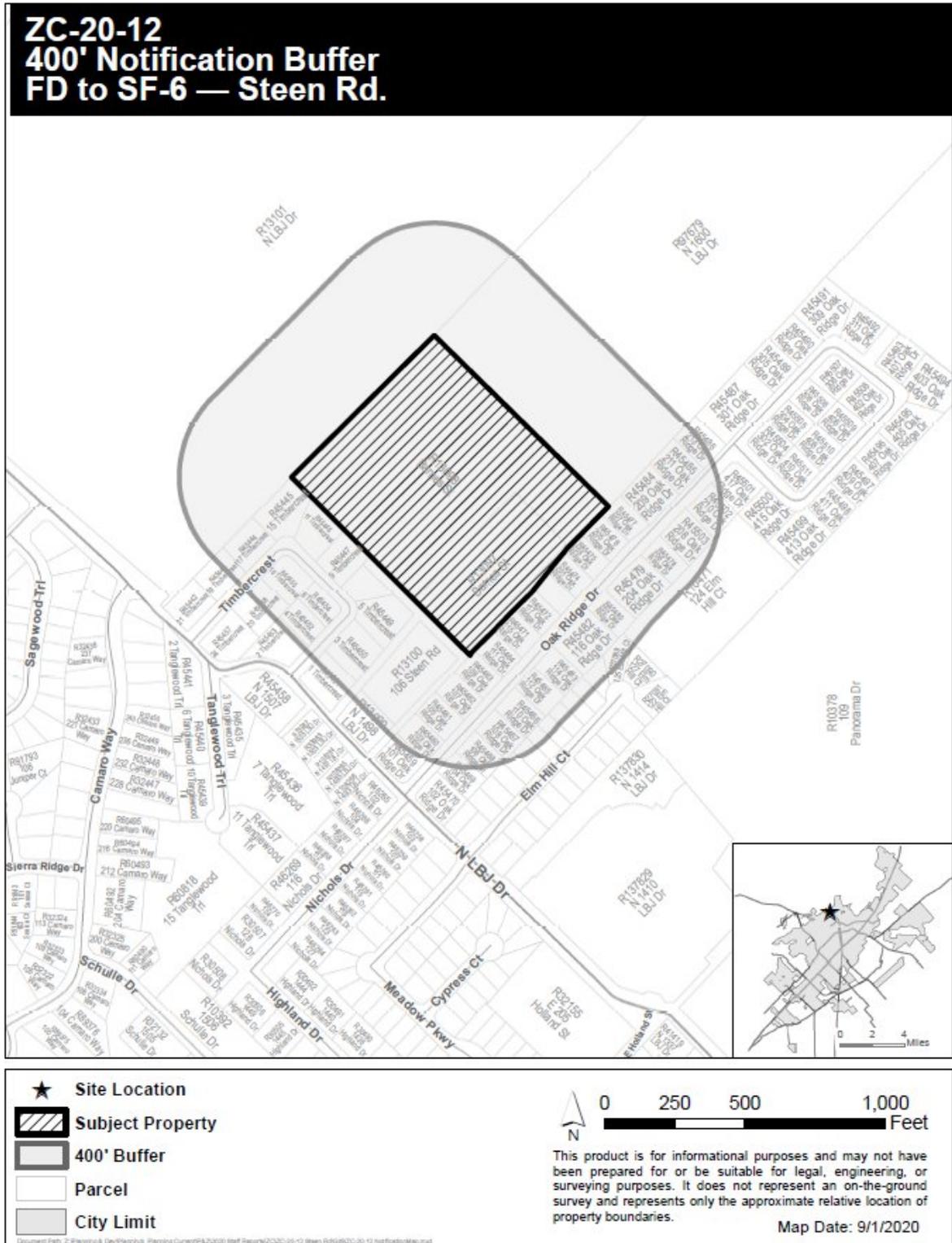
### ZC-20-12 Aerial View FD to SF-6 — Steen Road



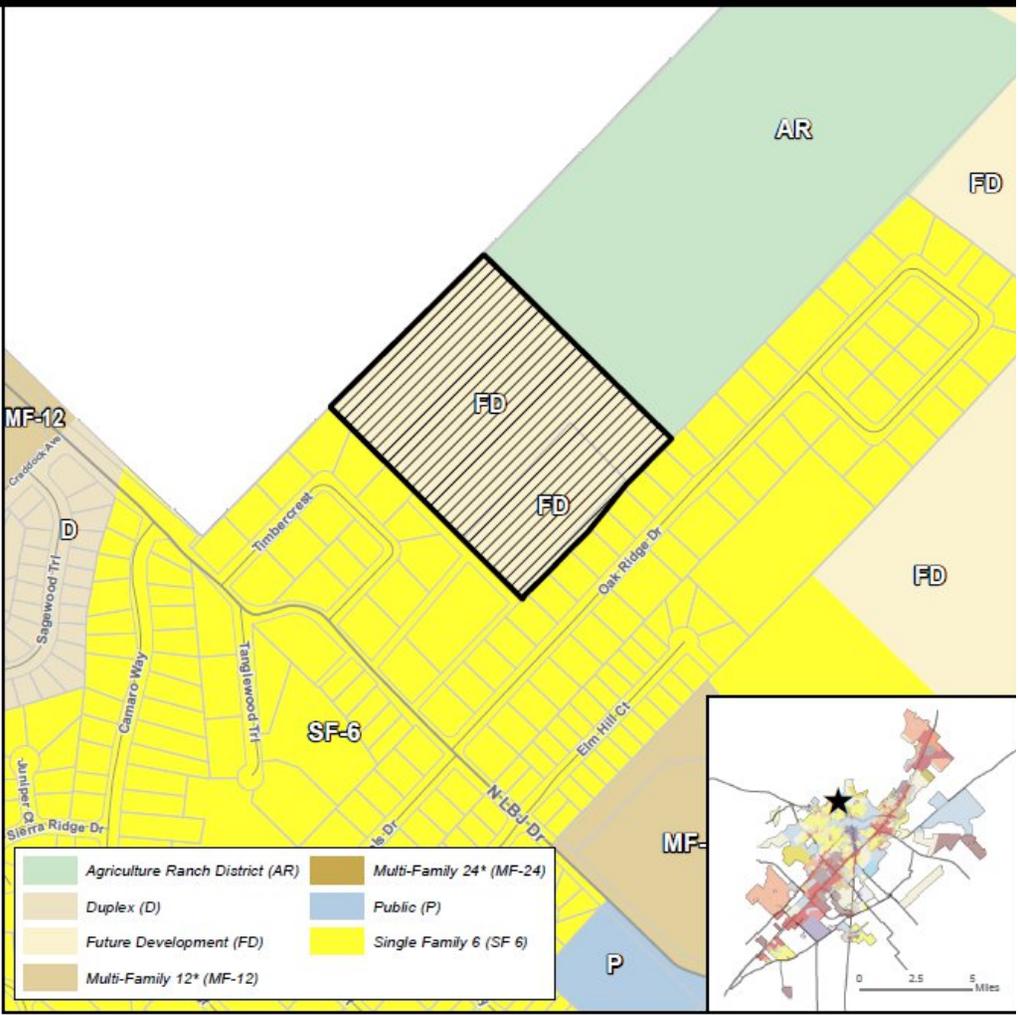
|                    |   |
|--------------------|---|
| ★ Site Location    |   |
| ▭ Subject Property |   |
| ▭ Parcel           | <p>This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.</p> <p>Map Date: 9/1/2020</p> |
| ▭ City Limit       |   |

# Context & History

- Annexed in 2015
- Existing Zoning: Future Development (FD)
- Proposed Zoning: Single Family (SF-6)
- Proposed SF-6 zoning allows single-family detached units.



# ZC-20-12 Existing Zoning FD to SF-6 — Steen Rd



★ Site Location

▨ Subject Property

□ Parcels

□ City Limit

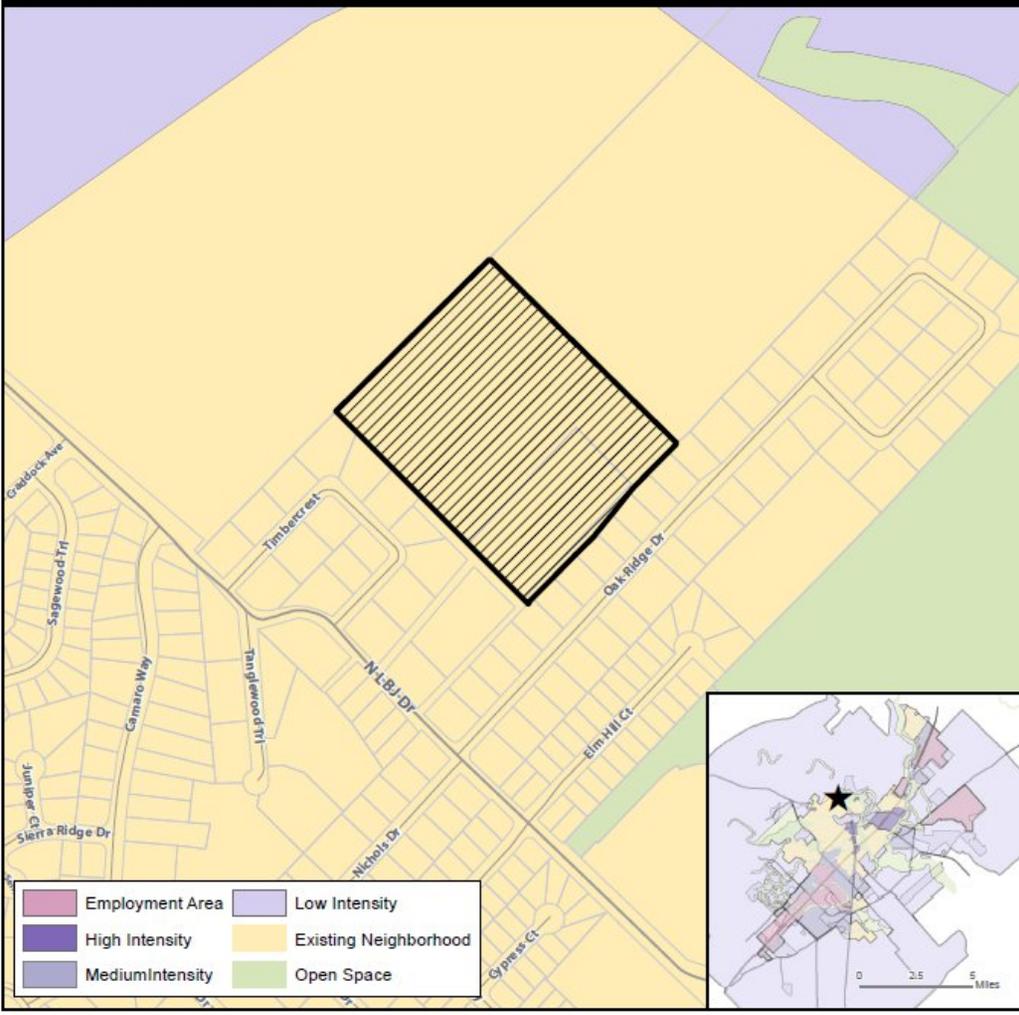
0 250 500 1,000 Feet

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 9/1/2020

Document Path: Z:\Planning & Dev\Planning\_Planning\_Council\9.1.2020 Staff Reports\ZC20-12-12 Steen Rd\ZC20-12-12 Zoning Map.mxd

# ZC-20-12 Preferred Scenario FD to SF-6 — Steen Rd



★ Site Location

▨ Subject Property

□ Parcels

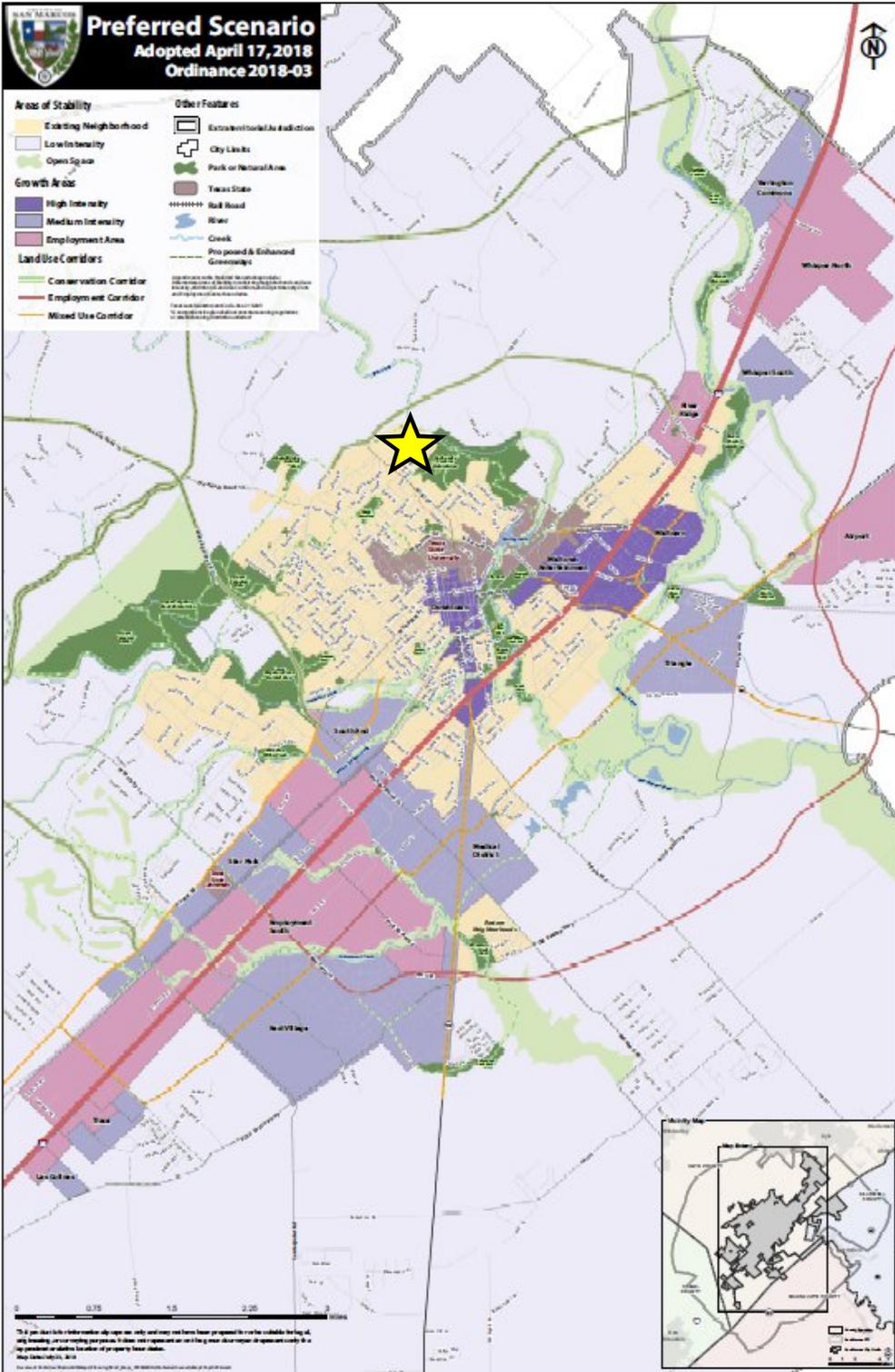
□ City Limit

0 250 500 1,000 Feet

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 9/4/2020

Document Path: Z:\Planning & Dev\Planning\_Planning\_Council\9.4.2020 Staff Reports\ZC20-12-12 Steen Rd\ZC20-12-12 Preferred Scenario.mxd



# Comprehensive Plan Analysis

**Step 1:** Where is the property located on the Comprehensive Plan?

## Existing Neighborhood Area

“Established, primarily residential areas intended to maintain their existing character and to follow development and redevelopment patterns that are compatible with the existing character.” (4.1.1.6)

# Comprehensive Plan Analysis

**Step 2:** Is the request consistent with the Comprehensive Plan / District Translation Table?

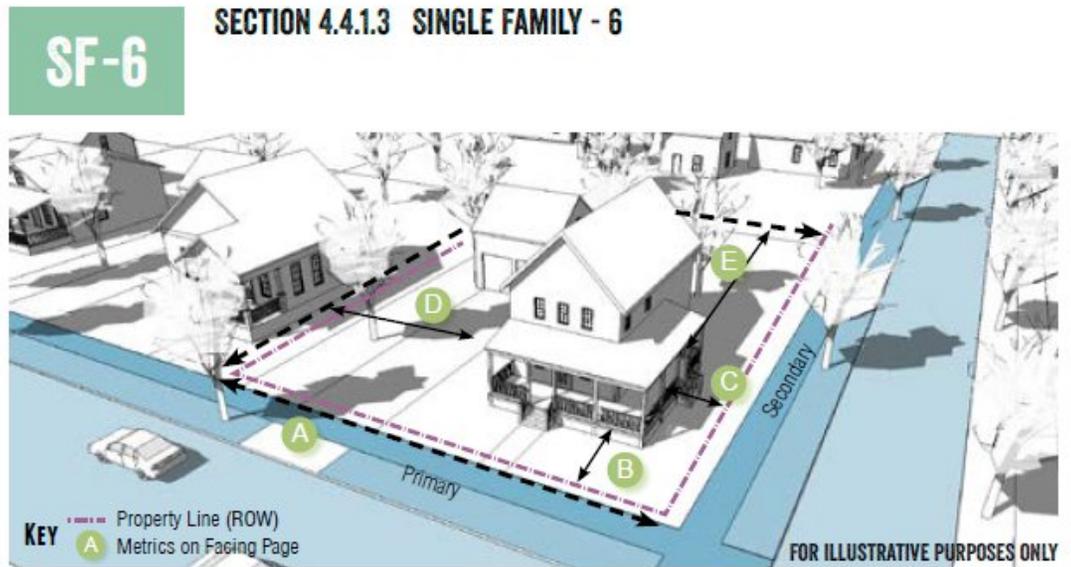
Applicant is requesting a Conventional residential District (SF-6) within an Existing Neighborhood Area. Zoning request is C – Considered, and is consistent with the San Marcos Development Code.

**TABLE 4.1 COMPREHENSIVE PLAN / DISTRICT TRANSLATION**

| DISTRICT CLASSIFICATION           | COMPREHENSIVE PLAN DESIGNATIONS |               |                                  |                                  |                      |          |
|-----------------------------------|---------------------------------|---------------|----------------------------------|----------------------------------|----------------------|----------|
|                                   | OPEN SPACE/<br>AGRICULTURAL     | LOW INTENSITY | EXISTING<br>NEIGHBORHOOD         | MEDIUM OR HIGH<br>INTENSITY ZONE | EMPLOYMENT<br>CENTER | CORRIDOR |
| Conventional Residential          | NP                              | NP            | C                                | --                               | --                   | --       |
| Neighborhood Density<br>Districts | NP                              | NP            | See Section<br>4.1.2.4 - 4.1.2.5 | NP                               | NP                   | C        |
| Character Districts               | NP                              | C             | --                               | C                                | NP                   | C        |
| Special Districts                 | --                              | NP            | NP                               | NP                               | C                    | C        |
| Legend                            | -- = Not Allowed (PSA Required) |               | NP = Not Preferred               |                                  | C = Consider         |          |

# SF-6 Zoning Analysis:

- The SF-6 district is intended to accommodate single family detached houses with a minimum lot size of 6,000 square feet.
- **Allowable Building Types:** House, Cottage, and Civic Building.
- Proposed rezoning aligns with vision of the Comprehensive Plan.
- The property is vacant.



**GENERAL DESCRIPTION**

The SF-6 district is intended to accommodate single family detached houses with a minimum lot size of 6,000 square feet. Characterized by smaller landscaped areas with moderate setbacks and more frequent pedestrian use. Uses that would substantially interfere with the residential nature of the district are not allowed.

**DENSITY**

|                        |                 |
|------------------------|-----------------|
| Units Per Gross Acre   | 5.5 max.        |
| Impervious Cover       | 50% max.        |
| Occupancy Restrictions | Section 5.1.4.1 |

**TRANSPORTATION**

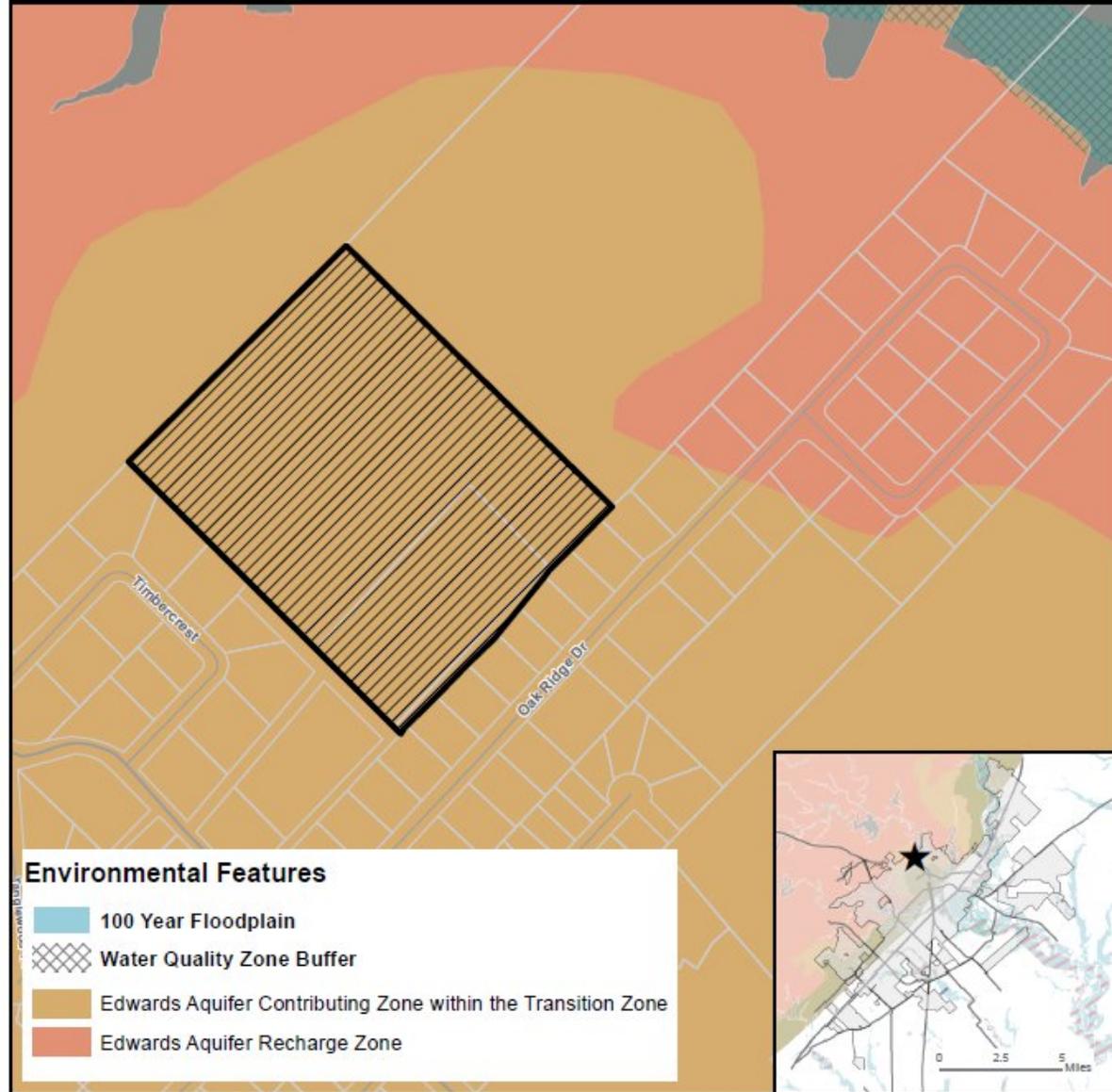
|   |               |                  |
|---|---------------|------------------|
| Block Perimeter   | 3,000 ft. max | Section 3.6.2.1  |
| Streetscape Type  | Residential   | Section 3.8.1.10 |
| Sidewalks are not required for lots greater than 1 acre |               |                  |

**BUILDING TYPES ALLOWED**

|                    |                  |
|--------------------|------------------|
| Accessory Dwelling | Section 4.4.6.1  |
| House              | Section 4.4.6.2  |
| Cottage            | Section 4.4.6.3  |
| Civic              | Section 4.4.6.15 |

# Environmental Analysis

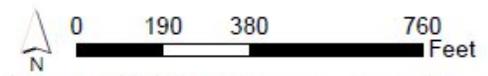
- Not located in floodplain.
- Located in the Edwards Aquifer Contributing Zone.
- Significant slopes on <10% of the property.



**Environmental Features**

- 100 Year Floodplain
- Water Quality Zone Buffer
- Edwards Aquifer Contributing Zone within the Transition Zone
- Edwards Aquifer Recharge Zone

- Site Location
- Subject Property
- Parcels
- City Limit



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Map Date: 9/4/2020



## **Staff Recommendation:**

Staff provides this request to the Commission for your consideration and recommends **approval** of the request for a zoning change from “FD” Future Development to “SF-6” Single-Family.

## **Planning & Zoning Commission Recommendation:**

A motion was proposed by Commissioner Kelsey, seconded by Commissioner Haverland to recommend **denial** of ZC-20-12. The motion passed 9-0.

**\*\*A Super Majority Vote is required to overturn the denial recommendation by the Planning and Zoning Commission.**

# Zoning District Comparison Chart

| Topic                        | Existing Zoning:<br>Future Development (FD)   | Proposed Zoning:<br>Single Family (SF-6)   |
|------------------------------|---|--|
| Zoning Description           | The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings. | The SF-6 district is intended to accommodate single family detached houses with a minimum lot size of 6,000 square feet. Characterized by smaller landscaped areas with moderate setbacks and more frequent pedestrian use. Uses that would substantially interfere with the residential nature of the district are not allowed. |
| Uses                         | Residential (See Land Use Matrix)   | Single-family residential. (See Land Use Matrix)   |
| Parking Location             | No location standards   | No location standards  |
| Parking Standards            | 2 spaces per dwelling unit (if single family detached)  | 2 space per dwelling unit.   |
| Max Residential Units / acre | 0.4 units per acre (max)  | 5.5 units per acre (max)   |
| Occupancy Restrictions       | N/A   | N/A  |
| Landscaping                  | Tree and shrub requirements   | Tree and shrub requirements  |
| Building Height (max)        | 2 stories   | 2 stories  |
| Setbacks                     | 50' front setback, 20 ft side setback, . Rear setback: 20% of the lot depth   | 25' front Setback, 5' side setback, 20' rear set back.   |
| Impervious Cover (max)       | 30%   | 50%  |
| Lot Sizes                    | Allows a variety of lot sizes depending on Building Type.   | Allows a variety of lot sizes depending on Building Type.  |
| Streetscapes                 | Residential Street: 5' sidewalk for lots smaller than 1 acre, street trees every 40' on center average, 7' planting area.   | Residential, and Conventional.   |
| Blocks                       | No Block Perimeter Required   | 3,000 ft. Block Perimeter max.   |

## **Agenda Information**

### **AGENDA CAPTION:**

**7:00PM** Receive a Staff presentation and hold a public hearing to receive comments for or against Ordinance 2011-76 related to the Casey Development, also known as the North Campus Housing Development, approving an amendment to the Future Land Use Map of the City from “LDR” Low Density Residential to “MU” Mixed Use for a 13.51 acre, more or less, tract of land located at Sessom Drive and Loquat Street, being lots 36, 37, 38, 54, 57, 58, 53, 55, 56, 59, 60, 61, 62, and part of lots 39, 40, 41, 42, 43, 44, 50, 51, 52 and 63, out of the Park Addition and a portion out of the Thomas J. Chambers Survey, Abstract No. 2, tract 232; amending the Official Zoning Map of the City by rezoning said tract of land from “SF-6” Single-Family Residential District to “PDD” Planned Development District with base zoning of “MU” Mixed Use District; approving Planned Development District Standards for the District; including procedural provisions; and providing for penalties; **and consider approval of Ordinance 2011-76.**

**Meeting date:** December 14, 2011

**Department:** Development Services

**Funds Required:** NA

**Account Number:** NA

**Funds Available:** NA

**Account Name:** NA

### **CITY COUNCIL GOAL:**

Community Wellness/Encourage the Middle Class

### **BACKGROUND:**

The Land Use Amendment request is being considered concurrently with a request to rezone the site to Mixed Use with a PDD Overlay. The request will allow for the development of a mixed use development with a retail component.

As part of the project, the applicant is proposing to abandon all rights-of-way within the project parameters. If the abandonment request is approved, the proposed zoning classification will encompass the entire site, including the rights-of-way.

### **ATTACHMENTS:**

Ordinance  
Ordinance Exhibit A-Description  
Ordinance Exhibit B-PDD Standards  
Ordinance Exhibit B-Concept Plan Attachment to PDD Standards  
Notification Map  
Notification Letter



## Legislation Text

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**File #:** Res. 2020-231R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-231R, approving an agreement for the provision of services in connection with the proposed owner requested annexation of approximately 33 acres of land, generally located in the 2400 Block of State Hwy 123 (Case No. AN-20-12: Picoma); authorizing the City Manager, or his designee, to execute said agreement on behalf of the City; setting a date for a Public Hearing concerning the proposed annexation of said tract of land; and declaring an effective date.

**Meeting date:** October 20, 2020

**Department:** Planning and Development Services

**Amount & Source of Funding**

**Funds Required:** n/a

**Account Number:** n/a

**Funds Available:** n/a

**Account Name:** n/a

**Fiscal Note:**

**Prior Council Action:** n/a

**City Council Strategic Initiative:**

N/A

**Comprehensive Plan Element (s):**

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:**

Vision San Marcos - A River Runs Through Us

**Background Information:**

This is a request for a voluntary annexation submitted by Ed Theriot, Doucet and Associates, Inc., on behalf of Jaime J. Russek Martinez, for approximately 33 +/- acres of land out of the Barnett O. Kane Survey, Abstract No. 281, Hays County, generally located in the 2400 Block of Hwy 123.

Water and wastewater service will be provided by the City of San Marcos. This site is not located in the San Marcos Wastewater CCN, however, the CCN boundary will be updated after annexation of the site. The developer will be responsible for extending water and wastewater facilities through the site. Bluebonnet Electric will provide electric service for this development.

The City of San Marcos will provide Police, Fire, and EMS services to the site.

Below is a proposed schedule for this annexation, which complies with the Texas Local Government Code requirements:

- **City Council Resolution (Approval of Service Agreement and set a public hearing date):** October 20, 2020 (Today)
- **City Council Ordinance 1st Reading (Public Hearing):** November 17, 2020
- **City Council Ordinance 2nd Reading:** December 1, 2020

**Council Committee, Board/Commission Action:**

n/a

**Alternatives:**

n/a

**Recommendation:**

n/a

**RESOLUTION NO. 2020- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN AGREEMENT FOR THE PROVISION OF SERVICES IN CONNECTION WITH THE PROPOSED OWNER REQUESTED ANNEXATION OF APPROXIMATELY 33 ACRES OF LAND GENERALLY LOCATED IN THE 2400 BLOCK OF STATE HIGHWAY 123 (CASE NUMBER AN-20-12: PICOMA); AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY; SETTING A DATE FOR A PUBLIC HEARING CONCERNING THE PROPOSED ANNEXATION OF SAID TRACT OF LAND; AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The attached Agreement for the Provision of Services is hereby approved.

**PART 2.** The City Manager, or his designee, is authorized to execute said Agreement on behalf of the City.

**PART 3.** The date for the public hearing concerning the proposed annexation of the land described in said Agreement shall be November 17, 2020.

**PART 4.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on October 20, 2020.

Jane Hughson  
Mayor

Attest:

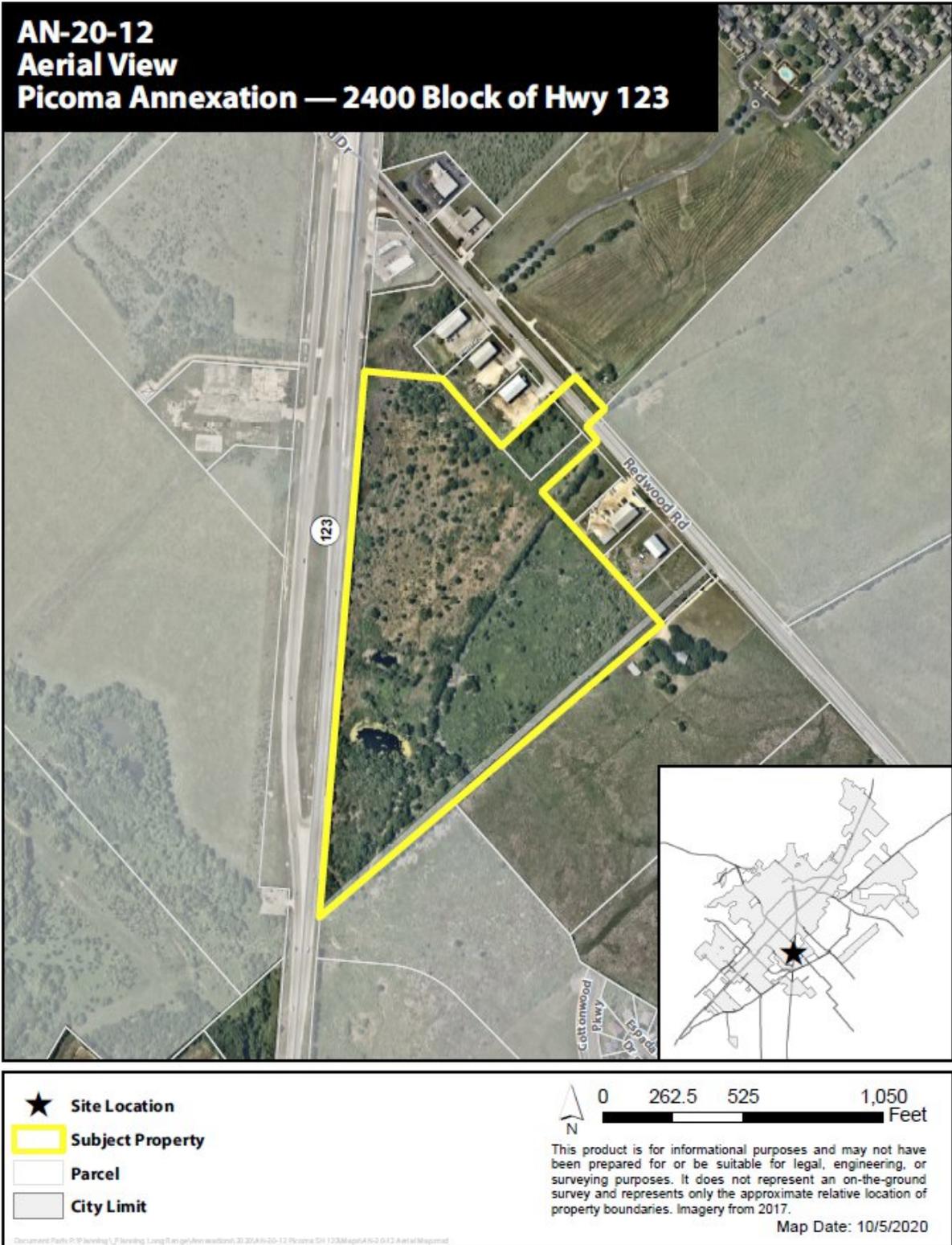
Tammy K. Cook  
Interim City Clerk

## AN-20-12 (Picoma Annexation)

Consider approval of Resolution 2020-X, approving an agreement for the provision of services in connection with the proposed owner requested annexation of approximately 33 acres of land, generally located in the 2400 Block of Hwy 123; authorizing the City Manager, or his designee, to execute said agreement on behalf of the City; setting a date for a Public Hearing concerning the proposed annexation of said tract of land; and declaring an effective date.

**Context:**

- 2400 Block of Redwood Road
- 33 +/- acres
- Applicant proposes to develop the subject property with multi-family
- Across the street to recently zoned CD-4 along Redwood Road (annexed in 2019)
- The applicant is requesting CD-5 zoning
- Service Plan (Attachment)



- ★ Site Location
- ▭ Subject Property
- ▭ Parcel
- ▭ City Limit



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.

Map Date: 10/5/2020



## Annexation & Zoning Schedules:

\*This schedule reflects the new annexation schedule per Texas House Bill 347

### Annexation Schedule

- **City Council Resolution (Approval of Service Agreement and set a public hearing date):** October 20, 2020 (*Today*)
  - **City Council Ordinance 1<sup>st</sup> Reading (Public Hearing):** November 17, 2020
  - **City Council Ordinance 2<sup>nd</sup> Reading:** December 1, 2020
- 

### Zoning Schedule

- **Planning and Zoning Commission (Public Hearing):** October 27, 2020
- **City Council Ordinance 1<sup>st</sup> Reading (Public Hearing):** November 17, 2020
- **City Council Ordinance 2<sup>nd</sup> Reading:** December 1, 2020

**AGREEMENT FOR THE PROVISION OF SERVICES**  
(Pursuant to Tex. Local Gov't Code §43.0672)

**Date:** October 20, 2020

**Owner:** Jaime J. Russek Martinez, 910 Rio Verde, New Braunfels, TX 78130

**City:** City of San Marcos, Texas, a home rule municipal corporation, 630, East Hopkins Street, San Marcos, Texas 78666

**Property:** As described in Exhibit A.

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1. The Owner has petitioned the City and the City has elected to annex the Property into the corporate limits of the City. Pursuant to Tex. Local Gov't Code §43.0672, the Owner and the City enter this agreement (the "Agreement") for the provision of services to the Property when annexed.

2. By this Agreement, the Owner affirms its consent to such annexation of the Property by the City and that Owner does not wish to enter into and has declined the offer from the City of a development agreement under Sections 43.016 and 212.172 of the Texas Local Government Code

3. In consideration of the mutual benefits to the Owner and the City arising from the annexation of the Property, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Owner and the City enter into this Agreement and agree that services to the Property will be provided as described in Exhibit B.

4. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in state courts located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

5. If any word, phrase, clause, sentence, or paragraph of this Agreement is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this Agreement will continue in force if they can be given effect without the invalid portion.

6. This Agreement shall be binding upon Owner, and Owner's heirs, successors and assigns, and all future owners of all or any portion of the Property.

7. This Agreement will become effective as of the date an ordinance annexing the Property is finally passed, approved and adopted by the City's city council (the Effective Date).

[SIGNATURES ON NEXT PAGE]

**CITY:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF TEXAS           §

§

COUNTY OF HAYS         §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the City of San Marcos, in such capacity, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas



## **EXHIBIT B**

When the Property is annexed, services will be provided to the Property as follows:

### **1. Police Protection**

Police services, including patrolling, response to calls and other routine services, will begin on the Effective Date of the annexation using existing personnel and equipment.

### **2. Fire Protection**

Fire protection services, including emergency response calls, will begin on the Effective Date of the annexation using existing personnel and equipment and within the limitations of the available water supply.

### **3. Emergency Medical Services**

The City of San Marcos contracts for emergency medical services through the San Marcos – Hays County EMS, which already provides service to the area being annexed.

### **4. Solid Waste Collection**

Solid waste collection services, provided under contract with a private company, will be made available to all properties on the Effective Date of the annexation. Residents of the Property may elect to continue using the services of a private solid waste hauler for a period of two years after the Effective Date of the annexation. Businesses and institutions must make arrangements with private solid waste haulers.

### **5. Operation and Maintenance of Water and Wastewater Facilities**

**a. Water.** The Property is located within an area over which the City of San Marcos holds a Certificate of Convenience and Necessity (CCN) for water service. The City will make water service available to the Property on the Effective Date of the annexation on the same basis as available to other owners of property in the City, i.e., the Owner is solely responsible for the cost to construct and extend all infrastructure, facilities, and lines necessary to serve the Property.

**b. Wastewater.** The Property is not covered by a CCN for wastewater service, however, the City of San Marcos has wastewater lines near the Property and agrees to make wastewater service available to the Property on the Effective Date of the annexation on the same basis as available to other owners of property in the City, i.e., the Owner is solely responsible for the cost to construct and extend all infrastructure, facilities, and lines necessary to serve the Property. In addition, the City is in the process of adding the Property as an area covered by the City's CCN for wastewater service.

### **6. Construction, Operation and Maintenance of Roads and Streets**

As new development occurs within the Property, the Owner(s) of Property will be required to construct streets at the Owner's sole expense in accordance with applicable ordinances of the City.

### **7. Electric Service**

The Property is located in the Bluebonnet Electric service area. Thus, the City will not provide electric service to the Property.

### **8. Operation and Maintenance of Parks, Playgrounds, and/or Swimming Pools**

No parks, playgrounds, and/or swimming pools currently exist within the Property. The same standards and policies now established and in force within the city limits will be followed in maintaining and expanding recreational facilities to serve the Property. Upon annexation, the owners and residents of property located within the Property shall be entitled to the use of all municipal parks and recreational facilities, subject to the same restrictions, fees, and availability that pertains to the use of those facilities by other citizens of the city.

### **9. Operation and Maintenance of Other Public Facilities, Buildings, and Services**

No other public facilities, buildings, or services currently exist within the Property. The same standards and policies now established and in force within the city limits will be followed in maintaining and expanding other public facilities, building, and services. Upon annexation, the owners and residents of property located within the Property shall be entitled to the use of all municipal facilities, buildings, and services, subject to the same restrictions, fees, and availability that pertains to the use of those facilities and services by other citizens of the city.

# EXHIBIT A



Exhibit " \_ " "

7401 B. Highway 71 W, Suite 160  
Austin, TX 78735  
Office: 512.583.2600  
Fax: 800.587.2817

[Doucetengineers.com](http://Doucetengineers.com)

**Picoma Annexation 32.73 Acres  
Hays County**

**D&A Job No. 2161-001  
October 5, 2020**

## **TRACT 1 – 32.24 ACRES TOTAL**

**BEING ALL OF LOT 1 OF THE R & R SUBDIVISION, SECTION 2, A MAP OR PLAT THEREOF RECORDED IN VOLUME 8, PAGE 158 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS [P.R.H.C.T.]; CONTAINING 1.000 ACRE OF LAND PER SAID PLAT,**

**BEING 31.24-ACRES TRACT OUT OF THE BARNETT O. KANE SURVEY ABSTRACT NUMBER 281, HAYS COUNTY, TEXAS, BEING A PORTION OF THE REMAINDER OF A CALLED 43.40-ACRE TRACT, CONVEYED TO JAIME J. RUSSEK MARTINEZ IN VOLUME 2221, PAGE 204 AND DESCRIBED IN VOLUME 560, PAGE 396 OF REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS [R.P.R.H.C.T.], SAID 31.24-ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING** at a 1/2-inch iron rod with plastic cap stamped "Land Dev" found on the existing east Right-of-Way line of SH 123, a variable width Right-of-Way, for the south corner of said 43.40-acre tract, and an angle corner of Lot 1, Block 1 of El Camino Real Section 3, Phase 1, recorded in Volume 12, Page 128 [P.R.H.C.T.], same being the **POINT OF BEGINNING**, and the south corner the tract described herein;

**THENCE** N04°21'01"E, with the existing east Right-of-Way line of said SH 123, a distance of 2,071.52 feet to a 1/2-inch iron rod with cap stamped "Doucet", set for the southwest corner of Lot 5, Block 1 Section 2, R and R Subdivision, recorded in Volume 11, Page 26 [P.R.H.C.T.], and for the northwest corner of the tract described herein;

**THENCE** S85°36'23"E, with the common line to said Lot 5 and said 43.40-acre remainder tract, a distance of 292.83 feet to a 1/2-inch iron rod found for the southeast corner of said Lot 5, on the southwest line of Lot 4, Block 1 of R and R Subdivision Section 2, recorded in Volume 8, Page 158 [P.R.H.C.T.], same being for the northern northeast corner of the tract described herein;

**THENCE** with the common line of said R and R Subdivision Sec 2 and said 43.40-acre remainder tract the following two (2) courses and distances:

- 1) S41°35'49"E, a distance of 5.99 feet passing a 1/2-inch iron rod found for the south corner of said Lot 4, same being west corner of Lot 3, a distance of 332.59 feet, passing a 1/2-inch iron rod found for the south corner of Lot 2, same being the west corner of Lot 1, for a total distance of 504.73 feet to a 1/2-inch iron rod (bent) found for the south corner of said Lot 1, and being an interior corner of the tract described herein;
- 2) N48°23'17"E, a distance of 262.10 feet to a 1/2-inch iron rod with cap stamped "Doucet", set on the existing south Right-of-Way line of County Road 232 also known as Redwood Road, a variable width Right-of-Way, recorded in Volume 6, Page 227 [P.R.H.C.T.], for the east corner of said Lot 1, same being an exterior corner of the tract described herein;

**CONTINUED ON NEXT PAGE**

COMMITMENT YOU EXPECT.  
EXPERIENCE YOU NEED.  
PEOPLE YOU TRUST.



**THENCE** with the existing south Right-of-Way line of said County Road 232, the following two (2) courses and distances:

- 1) S41°38'40"E, a distance of 14.13 feet to a 1/2-inch iron rod with cap stamped "Doucet" set for an angle corner of said 43.40-acre remainder tract and the tract described herein;
- 2) S41°24'40"E, a distance of 45.88 feet to a 1/2-inch iron rod found for the north corner of Lot 4, Block 2 of said R and R Subdivision Section 2, the northeast corner of the tract described herein;

**THENCE** with the common lines of said 43.40-acre remainder tract and said Block 2 of R and R Sect 2 Subdivision, the following two (2) courses and distances:

- 1) S48°23'17"W, a distance of 261.97 feet to a 1/2-inch iron rod found for the west corner of said Lot 4, Block 2, same being an interior corner of the tract described herein;
- 2) S41°35'49"E, a distance of 333.06 feet, passing a 1/2-inch iron rod found for the south corner of Lot 3, Block 2, same being the west corner of Lot 2, Block 2, a distance of 500.10 feet, passing a 1/2-inch iron rod found for the south corner of said Lot 2, same being the west corner of Lot 1, Block 2 of said Subdivision, continuing for a total distance of 667.03 feet to a 1/2-inch iron rod found on the northwest line of a called 20.00-acre tract conveyed to James E. Braden and Geraldyn B., described in Volume 296, Page 175 Deed Records of Hays County, Texas [D.R.H.C.T], for the south corner of Lot 1, same being for the east corner of said 43.40-acre remainder tract and the tract described herein;

**THENCE** S48°29'16"W, with the line common to said 20.00-acre tract and said 43.40-acre tract, a distance of 1,031.24 feet to a 1/2-inch iron rod found for the west corner of said 20.00-acre tract, same being the north corner of said Lot 1, Block 1 of El Camino Real, and an angle corner of said 43.40-acre tract and the tract described herein;

**THENCE**, S48°26'41"W, with the line common to said Lot 1, Block 1 of El Camino Real and said 43.40-acre remainder tract, a distance of 661.01 feet to the **POINT OF BEGINNING** of the herein described tract, containing 31.24-acres, more or less.

**CONTINUED ON NEXT PAGE**



**TRACT 2 – 0.49 ACRE**

**BEING A 0.49-ACRE [21,731 SQUARE FEET] RIGHT-OF-WAY ANNEXATION TRACT LOCATED IN THE BARNETT D KANE SURVEY, ABSTRACT 281; SAID ANNEXATION TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING** at a 1/2-inch iron rod, found for the common east corner of Lot 1 and Lot 2, Block 1 of the R and R Subdivision, Section 2, a map or plat thereof, recorded in Volume 8, Page 158 of the Plat Records of Hays County, Texas [P.R.H.C.T.], same being in the existing southwest right-of-way line of Redwood Road (C.R. 232), a variable width right-of-way, per plats recorded in Volume 8, Page 277, and Volume 8, Page 158 [P.R.H.C.T.], and per Volume 2759, Page 212 of the Official Public Records of Hays County, Texas [O.P.R.H.C.T.], and same being the west corner of the tract described herein;

**THENCE** N48°23'17"E, over and across said existing Redwood Road right-of-way, for a distance of 100.00 feet to a calculated point in the northeast right-of-way line of said Redwood Road, same being in the southwest line of Lot 1, Block A of La Vista Foundation Subdivision, a map or plat thereof recorded in Volume 8, Page 277 [P.R.H.C.T.],

**THENCE** S41°32'19"E, with the southwest line of Lot 1 of La Vista Foundation, same being the northeast right-of-way line of said Redwood Road, for a distance of 148.63 feet to a calculated point for the south corner of said Lot 1, same being in the northwest line of a called 15.512 acre tract described in Document Number 19023898 [O.P.R.H.C.T.];

**THENCE** with the common line of said 15.512 acre tract and the northeast right-off-way line of Redwood Road, the following two (2) courses and distances:

1. S44°06'34"W, a distance of 10.95 feet to a calculated point, and
2. S41°32'19"E, a distance of 78.71 feet to a calculated point, same being the east corner of the tract described here,

**THENCE** S48°23'17"W, over and across said existing Redwood Road right-of-way, for a distance of 88.85 feet to a 1/2-inch iron rod, found for the north corner of Lot 4 of said R and R Subdivision, same being in the southwest right-of-way line of said Redwood Road, and same being the east corner of the remainder of a called 43.40 acre tract described in Volume 2221, Page 204 [O.P.R.H.C.T.], and for the south corner of the herein described tract;

**THENCE** with the common line of said 43.40 acre remainder tract and the southwest right-off-way line of Redwood Road, the following two (2) courses and distances:

**CONTINUED ON NEXT PAGE**



1. N41°24'40"W, a distance of 45.88 feet to a 1/2-inch iron rod with "Doucet" cap, found for an angle point, and
2. N41°38'40"W, a distance of 14.13 feet to 1/2-inch iron rod with "Doucet" cap, found for the common east corner of said remainder tract, and the east corner of said Lot 1 of the R and R Subdivision,

**THENCE** N41°38'40"W, with the existing southwest right-of-way line of Redwood Road and the northeast line of said Lot 1 of the R and R Subdivision, for a distance of 166.15 feet back to the **POINT OF BEGINNING** of the herein described tract, containing 0.49-acre [21,731 square feet] more or less.

Basis of bearing is the Texas Coordinate System, South Central Zone [4204], NAD 83 (2011), Epoch 2010. all distances shown are surface values and may be converted to grid by using the surface adjustment factor of 1.00013. units: US survey feet.

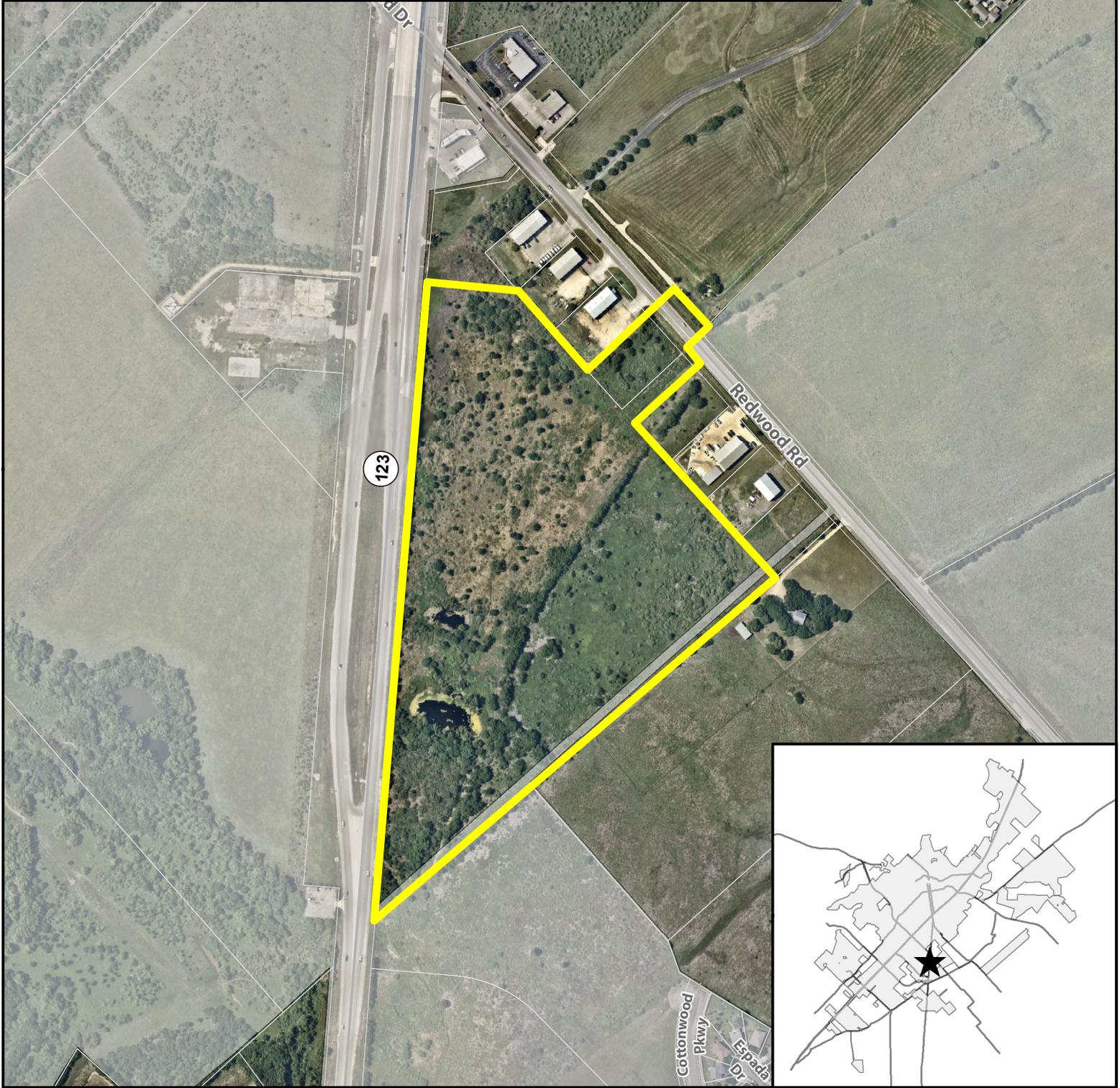
I, Garrett Cavaiuolo, Registered Professional Land Surveyor, hereby certify that portions of this document was prepared under 22 TAC §663.21, and does not reflect the results of an on the ground survey of the entire subject tract, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

  
\_\_\_\_\_  
Garrett Cavaiuolo  
Registered Professional Land Surveyor  
Texas Registration No. 6714  
Doucet & Associates  
gcavaiuolo@doucetengineers.com  
TBPELS Firm No. 10105800

10/05/2020  
Date



# AN-20-12 Aerial View Picoma Annexation — 2400 Block of Hwy 123



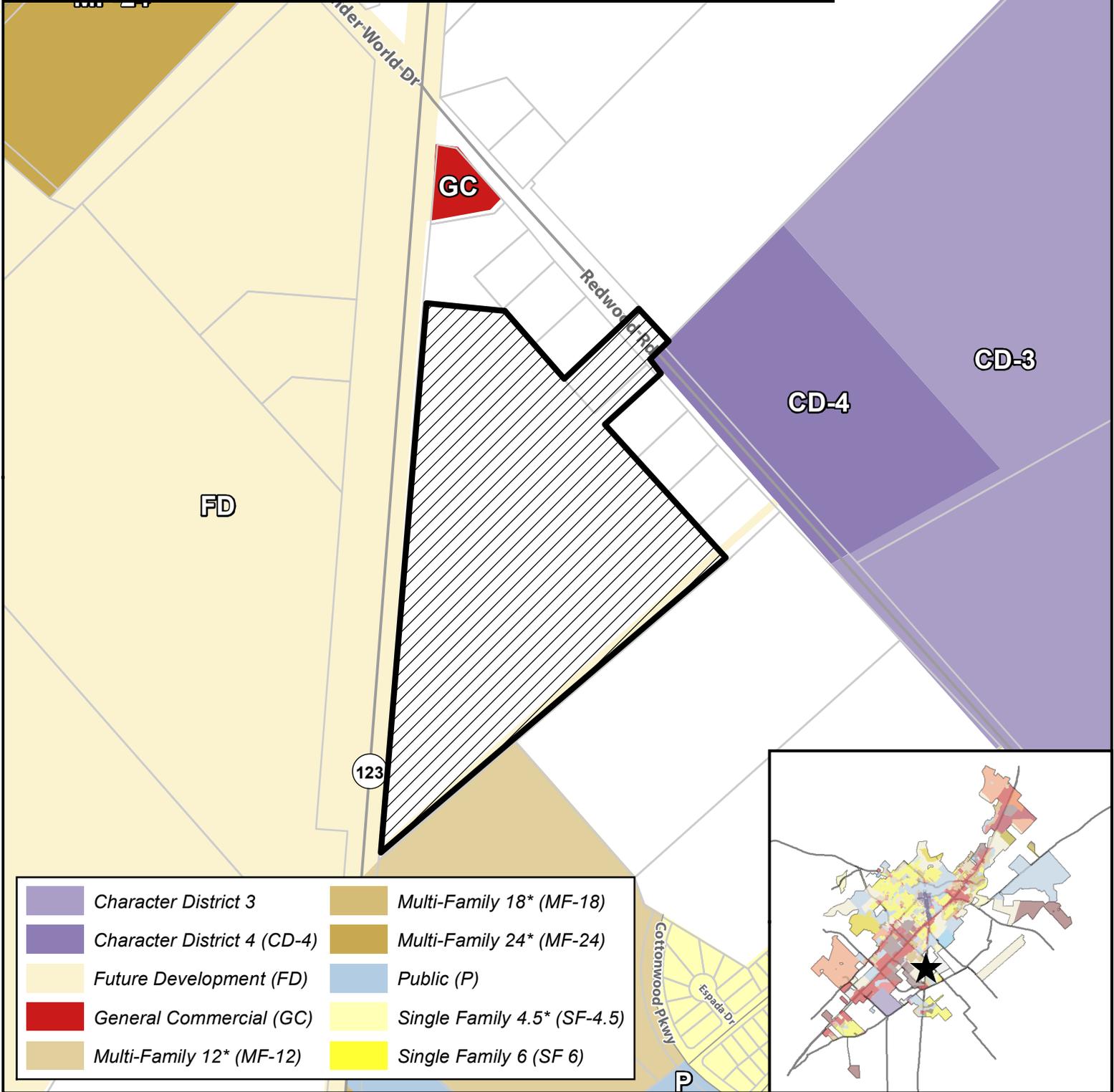
-  **Site Location**
-  **Subject Property**
-  **Parcel**
-  **City Limit**



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.

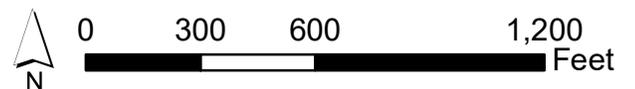
Map Date: 10/5/2020

# AN-20-12 Zoning Map Picoma Annexation — 2400 Block of Hwy 123



|  |                             |  |                             |
|--|-----------------------------|--|-----------------------------|
|  | Character District 3        |  | Multi-Family 18* (MF-18)    |
|  | Character District 4 (CD-4) |  | Multi-Family 24* (MF-24)    |
|  | Future Development (FD)     |  | Public (P)                  |
|  | General Commercial (GC)     |  | Single Family 4.5* (SF-4.5) |
|  | Multi-Family 12* (MF-12)    |  | Single Family 6 (SF 6)      |

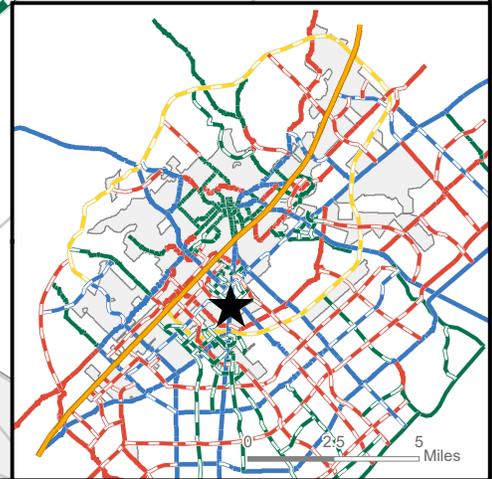
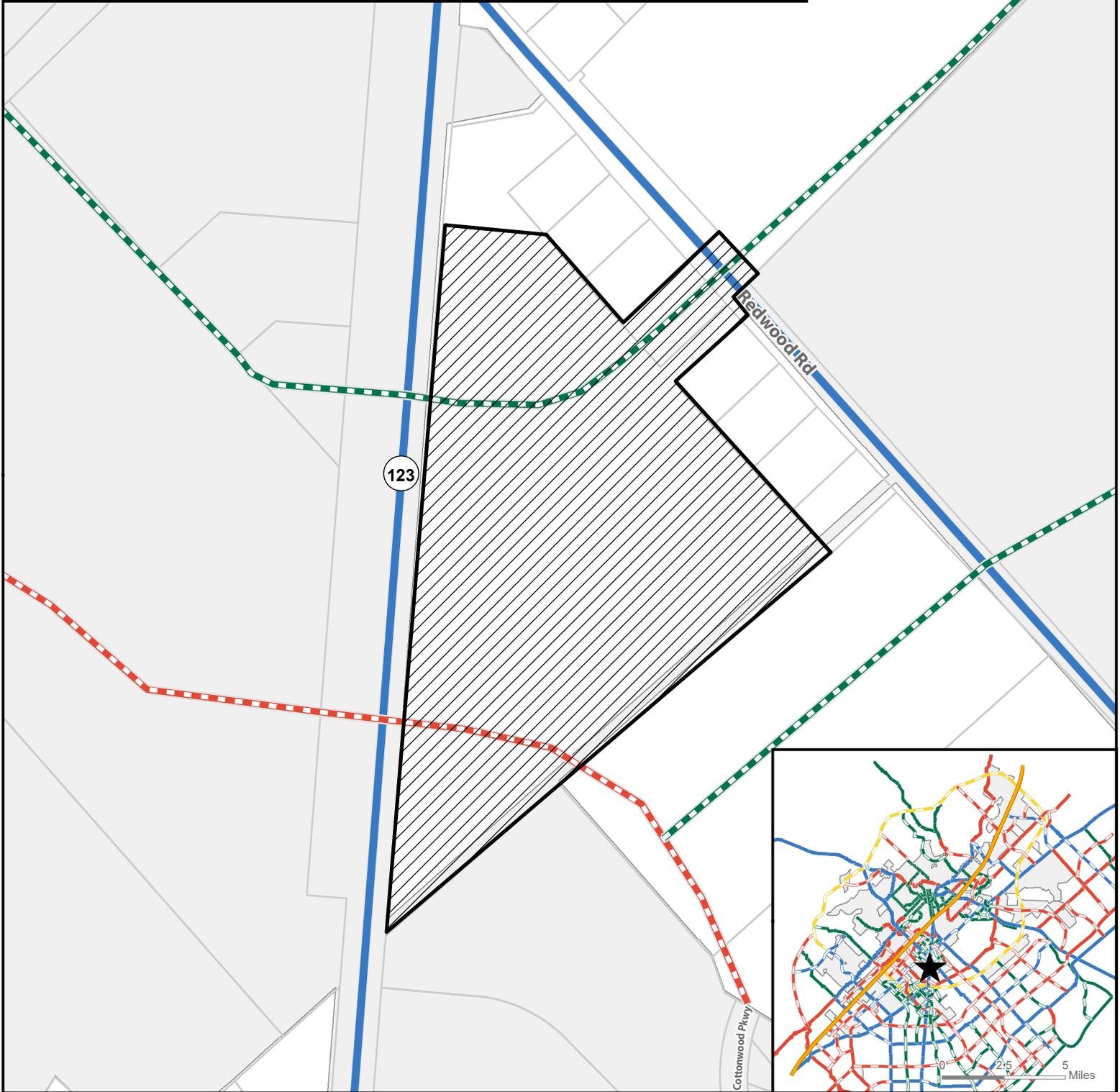
- Site Location**
- Subject Property**
- Parcels**
- City Limit**



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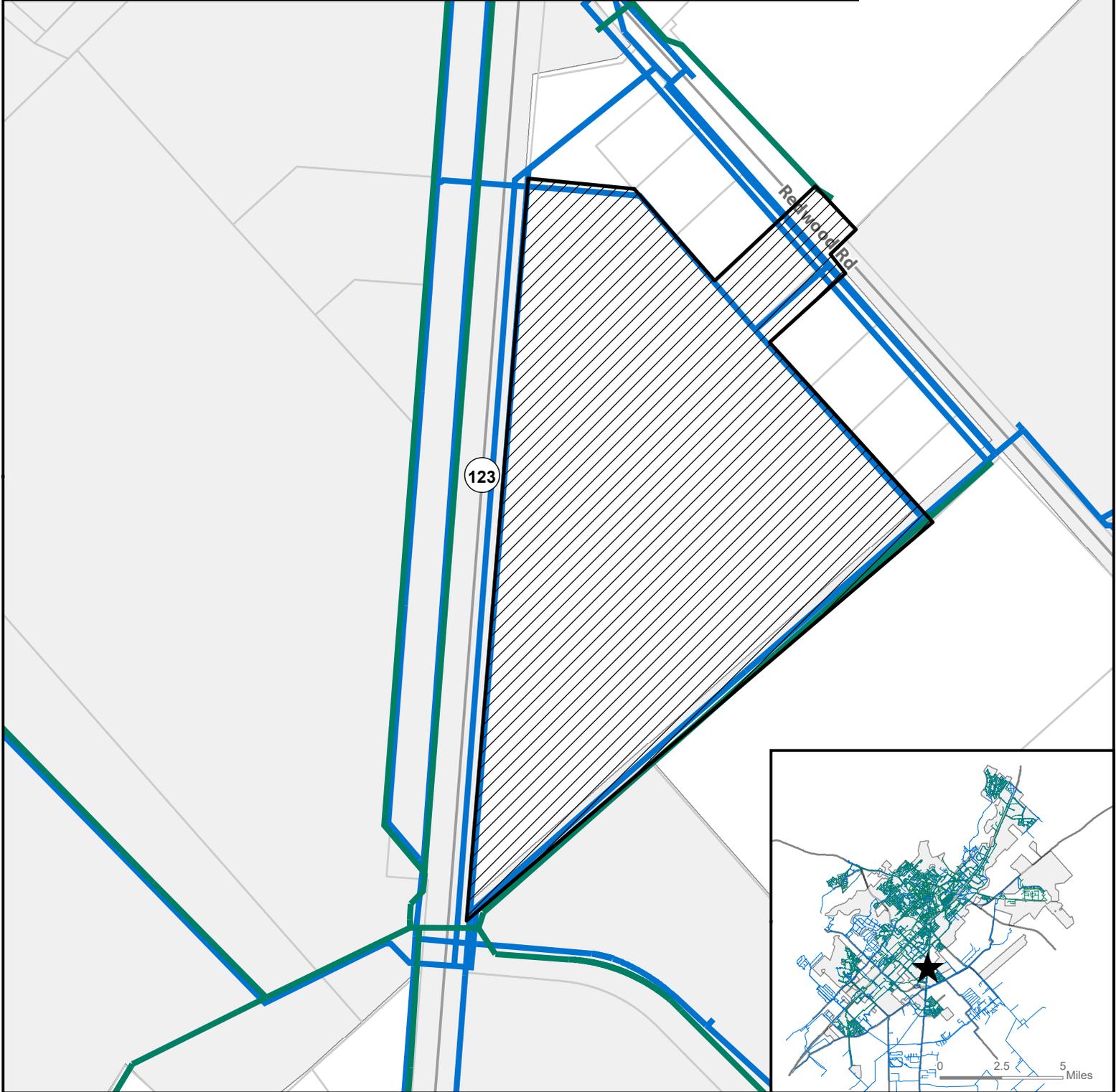
Map Date: 10/5/2020

# AN-20-12 Transportation Master Plan Picoma Annexation — 2400 Block of Hwy 123

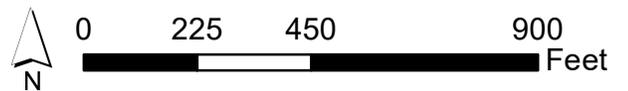


|  |   |  |
|--|---|--|
| <ul style="list-style-type: none"> <li> <b>Site Location</b></li> <li> <b>Subject Property</b></li> <li> <b>Parcels</b></li> <li> <b>City Limit</b></li> </ul> | <p><b>Thorough Fare Street Plan</b></p> <ul style="list-style-type: none"> <li> Enhanced Facilities Thoroughfare, Blvd</li> <li> Proposed Facilities Thoroughfare, Ave</li> <li> Proposed Facilities Thoroughfare, Blvd</li> <li> Proposed Facilities Thoroughfare, St</li> </ul> | <div style="text-align: center;">  <p>0    237.5    475    950<br/>Feet</p> </div> <p>This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.</p> <p style="text-align: right;">Map Date: 10/5/2020</p> |
|--|---|--|

# AN-20-12 Water / Wastewater Lines Picoma Annexation — 2400 Block of Hwy 123

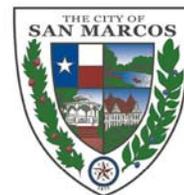


- ★ Site Location
- ▨ Subject Property
- Parcels
- City Limit
- Sanitary Main
- Water Main



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 10/5/2020



# ANNEXATION APPLICATION

Updated: October, 2019

## CONTACT INFORMATION

|                             |  |                         |  |
|-----------------------------|--|-------------------------|--|
| Applicant's Name            | Ed Theriot                                     | Property Owner          | Jaime J Russek Martinez                  |
| Company                     | Doucet & Associates, Inc.                      | Company                 |  |
| Applicant's Mailing Address | 7401B Hwy. 71 W., Ste. 160<br>Austin, TX 78735 | Owner's Mailing Address | 910 Rio Verde<br>New Braunfels, TX 78130 |
| Applicant's Phone #         | 512-618-2865                                   | Owner's Phone #         | 830-515-5034                             |
| Applicant's Email           | etheriot@doucetengineers.com                   | Owner's Email           | jr@run.mx                                |

## PROPERTY INFORMATION

Is the property adjacent to city limits  YES  NO

Is the property less than ½ mile in width  YES  NO

Are there less than 3 qualified voters living on the property  YES  NO

Proposed Use: Apartments Proposed Zoning: CD-5

Reason for Annexation / Other Considerations: \_\_\_\_\_  
Development of tract requires annexation to connect to water and wastewater facilities.

## AUTHORIZATION

*I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.*

Filing Fee \$1,181      Technology Fee \$13      TOTAL COST \$1,194

Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

**APPLY ONLINE – [WWW.MYGOVERNMENTONLINE.ORG/](http://WWW.MYGOVERNMENTONLINE.ORG/)**

PROPERTY OWNER AUTHORIZATION

I, Jaime J Russek Martinez (owner name) on behalf of \_\_\_\_\_ (company, if applicable) acknowledge that I/we am/are the rightful owner of the property located at SH 123 (south of Redwood Rd.) and 1850 Redwood Rd. (address).

I hereby authorize Ed Theriot (agent name) on behalf of Doucet & Associates, Inc. (agent company) to file this application for Annexation (application type), and, if necessary, to work with the Responsible Official / Department on my behalf throughout the process.

Signature of Owner:  Date: 27-Aug-2020

Printed Name, Title: Jaime J Russek Martinez

Signature of Agent:  Date: 8/28/20

Printed Name, Title: Ed Theriot



## CHECKLIST FOR ANNEXATION APPLICATION

| The following items are requested for consideration of this application. These and additional items may be required at the request of the Department   | Comments   |
|--|--|
| <input checked="" type="checkbox"/> Pre-development meeting with staff is recommended <ul style="list-style-type: none"> <li>• Please visit <a href="http://sanmarcostx.gov/1123/Pre-Development-Meetings">http://sanmarcostx.gov/1123/Pre-Development-Meetings</a> to schedule</li> </ul> |  |
| <input checked="" type="checkbox"/> Completed Application for Annexation   | Attached   |
| <input checked="" type="checkbox"/> Metes & Bounds description of the area to be annexed   | Provided   |
| <input checked="" type="checkbox"/> CAD file in grid for GIS integration. Projection: NAD 1983 StatePlane Texas South Central FIPS 4204 Feet   | Provided   |
| <input checked="" type="checkbox"/> Authorization to represent the property owner, if the applicant is not the owner   | Attached   |
| <input checked="" type="checkbox"/> Written request to waive the timing requirements for processing annexation under Chapter 43 of the Texas Local Government Code, if the applicant wishes for concurrent consideration of a Zoning Change  | Attached   |
| <input type="checkbox"/> Application Filing Fee    \$1,181<br><input type="checkbox"/> Technology Fee                \$13  | Will be paid upon fee confirmation by City staff |
| <b>**San Marcos Development Code Section 2.3.1.1(C): "Every application accepted by the responsible official for filing shall be subject to a determination of completeness...the responsible official is not required to review an application unless it is complete..."</b>              |  |

**METES AND BOUNDS DESCRIPTION 31.24--ACRES [TRACT 2].**

BEING A 31.24-ACRE TRACT OUT OF THE BARNETT O. KANE SURVEY ABSTRACT NUMBER 281, HAYS COUNTY, TEXAS, BEING A PORTION OF THE REMAINDER OF A CALLED 43.40-ACRE TRACT, CONVEYED TO JAIME J. RUSSEK MARTINEZ IN VOLUME 2221, PAGE 204 AND DESCRIBED IN VOLUME 560, PAGE 396 OF REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS [R.P.R.H.C.T.], SAID 31.24-ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2-INCH IRON ROD WITH PLASTIC CAP STAMPED "LAND DEV" FOUND ON THE EXISTING EAST RIGHT-OF-WAY LINE OF SH 123, A VARIABLE WIDTH RIGHT-OF-WAY, FOR THE SOUTH CORNER OF SAID 43.40-ACRE TRACT; AND AN ANGLE CORNER OF LOT 1, BLOCK 1 OF EL CAMINO REAL SECTION 3, PHASE 1, RECORDED IN VOLUME 12, PAGE 128 [P.R.H.C.T.], SAME BEING THE POINT OF BEGINNING, AND THE SOUTH CORNER THE TRACT DESCRIBED HEREIN;

THENCE N04°21'01"E, WITH THE EXISTING EAST RIGHT-OF-WAY LINE OF SAID SH 123, A DISTANCE OF 2,071.52 FEET TO A 1/2-INCH IRON ROD WITH CAP STAMPED "DOUCET"; SET FOR THE SOUTHWEST CORNER OF LOT 4, BLOCK 1 SECTION 2, R AND R SUBDIVISION, RECORDED IN VOLUME 11, PAGE 26 [P.R.H.C.T.], AND FOR THE NORTHWEST CORNER OF THE TRACT DESCRIBED HEREIN;

THENCE S85°36'23"E, WITH THE COMMON LINE TO SAID LOT 5 AND SAID 43.40-ACRE REMAINDER TRACT, A DISTANCE OF 292.83 FEET TO A 1/2-INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID LOT 5, ON THE SOUTHWEST LINE OF LOT 4, BLOCK 1 OF R AND R SUBDIVISION SECTION 2, RECORDED IN VOLUME 8, PAGE 158 [P.R.H.C.T.], SAME BEING FOR THE NORTHERN NORTHEAST CORNER OF THE TRACT DESCRIBED HEREIN;

THENCE WITH THE COMMON LINE OF SAID R AND R SUBDIVISION SEC 2 AND SAID 43.40-ACRE REMAINDER TRACT THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1) S41°35'49"E, A DISTANCE OF 5.99 FEET PASSING A 1/2-INCH IRON ROD FOUND FOR THE SOUTH CORNER OF SAID LOT 4, SAME BEING WEST CORNER OF LOT 3, A DISTANCE OF 332.59 FEET, PASSING A 1/2-INCH IRON ROD FOUND FOR THE SOUTH CORNER OF LOT 2, SAME BEING THE WEST CORNER OF LOT 1, FOR A TOTAL DISTANCE OF 504.73 FEET TO A 1/2-INCH IRON ROD (BENT) FOUND FOR THE SOUTH CORNER OF SAID LOT 1, AND BEING AN INTERIOR CORNER OF THE TRACT DESCRIBED HEREIN;

2) N48°23'17"E, A DISTANCE OF 262.10 FEET TO A 1/2-INCH IRON ROD WITH CAP STAMPED "DOUCET"; SET ON THE EXISTING SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 232 ALSO KNOWN AS REDWOOD ROAD, A VARIABLE WIDTH RIGHT-OF-WAY, RECORDED IN VOLUME 6, PAGE 277 [P.R.H.C.T.], FOR THE EAST CORNER OF SAID LOT 1, SAME BEING AN EXTERIOR CORNER OF THE TRACT DESCRIBED HEREIN;

THENCE WITH THE EXISTING SOUTH RIGHT-OF-WAY LINE OF SAID COUNTY ROAD 232, THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1) S41°38'40"E, A DISTANCE OF 14.13 FEET TO A 1/2-INCH IRON ROD WITH CAP STAMPED "DOUCET" SET FOR AN ANGLE CORNER OF SAID 43.40-ACRE REMAINDER TRACT AND THE TRACT DESCRIBED HEREIN;

2) S41°24'40"E, A DISTANCE OF 45.88 FEET TO A 1/2-INCH IRON ROD FOUND FOR THE NORTH CORNER OF LOT 4, BLOCK 2 OF SAID R AND R SUBDIVISION SECTION 2, THE NORTHEAST CORNER OF THE TRACT DESCRIBED HEREIN;

THENCE WITH THE COMMON LINES OF SAID 43.40-ACRE REMAINDER TRACT AND SAID BLOCK 2 OF R AND R SEC 2 SUBDIVISION, THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1) S48°23'17"W, A DISTANCE OF 261.97 FEET TO A 1/2-INCH IRON ROD FOUND FOR THE WEST CORNER OF SAID LOT 4, BLOCK 2, SAME BEING AN INTERIOR CORNER OF THE TRACT DESCRIBED HEREIN;

2) S41°35'49"E, A DISTANCE OF 333.06 FEET, PASSING A 1/2-INCH IRON ROD FOUND FOR THE SOUTH CORNER OF LOT 3, BLOCK 2, SAME BEING THE WEST CORNER OF LOT 2, BLOCK 2, A DISTANCE OF 500.10 FEET, PASSING A 1/2-INCH IRON ROD FOUND FOR THE SOUTH CORNER OF SAID LOT 2, SAME BEING THE WEST CORNER OF LOT 1, BLOCK 2 OF SAID SUBDIVISION, CONTINUING FOR A TOTAL DISTANCE OF 667.03 FEET TO A 1/2-INCH IRON ROD FOUND ON THE NORTHWEST LINE OF A CALLED 20.00-ACRE TRACT CONVEYED TO JAMES E. BRADEN AND GERALDINE B., DESCRIBED IN VOLUME 296, PAGE 175 DEED RECORDS OF HAYS COUNTY, TEXAS [D.R.H.C.T.], FOR THE SOUTH CORNER OF LOT 1, SAME BEING FOR THE EAST CORNER OF SAID 43.40-ACRE REMAINDER TRACT AND THE TRACT DESCRIBED HEREIN;

THENCE S48°29'16"W, WITH THE LINE COMMON TO SAID 20.00-ACRE TRACT AND SAID 43.40-ACRE TRACT, A DISTANCE OF 1,031.24 FEET TO A 1/2-INCH IRON ROD FOUND FOR THE WEST CORNER OF SAID 20.00-ACRE TRACT, SAME BEING THE NORTH CORNER OF SAID LOT 1, BLOCK 1 OF EL CAMINO REAL AND AN ANGLE CORNER OF SAID 43.40-ACRE TRACT AND THE TRACT DESCRIBED HEREIN;

THENCE, S48°26'41"W, WITH THE LINE COMMON TO SAID LOT 1, BLOCK 1 OF EL CAMINO REAL AND SAID 43.40-ACRE REMAINDER TRACT, A DISTANCE OF 661.01 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT, CONTAINING 31.24-ACRES, MORE OR LESS.

**LEGAL DESCRIPTION:**

TRACT 1: LOT 1, BLOCK 1, OF R AND R SUBDIVISION SECTION TWO, A SUBDIVISION IN HAYS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT OF RECORD IN VOLUME 8, PAGE 158, PLAT RECORDS OF HAYS COUNTY, TEXAS.

TRACT 2: BEING THE REMAINDER OF THAT 43.40-ACRES OF LAND, IN THE BARNETT O. KANE SURVEY ABSTRACT NO. 281, SITUATED IN HAYS COUNTY, TEXAS, BEING THAT SAME TRACT CONVEYED IN VOLUME 560, PAGE 396, REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS, AND AS SUBSEQUENTLY CONVEYED IN VOLUME 2221, PAGE 204 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, SAME AND EXCEPT THEREFROM, (I) THAT CERTAIN 1.105 ACRE TRACT OF LAND CONVEYED IN VOLUME 1128, PAGE 100, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, NOW KNOWN AS LOT 1, BLOCK 1, OF R AND R SUBDIVISION SECTION TWO, A SUBDIVISION IN HAYS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT OF RECORD IN VOLUME 8, PAGE 158, PLAT RECORDS OF HAYS COUNTY, TEXAS, (II) THAT CERTAIN 10.0 ACRE TRACT OF LAND CONSISTING ALL OF LOTS OF R AND R SUBDIVISION SECTION TWO, RECORDED IN VOLUME 8, PAGE 158, PLAT RECORDS OF HAYS COUNTY, TEXAS (III) THAT 2.00 ACRE TRACT OF LAND BEING ALL OF LOTS 5, BLOCK 1, R AND R SUBDIVISION SECTION TWO, RECORDED IN VOLUME 11, PAGE 26, PLAT RECORDS OF HAYS COUNTY, TEXAS.

**TITLE COMMITMENT NOTES:**

COMMITMENT FOR TITLE INSURANCE PREPARED BY FIRST AMERICAN TITLE GUARANTY COMPANY, GF. NO. 20-1592-C, EFFECTIVE DATE OF JUNE 15, 2020, AND ISSUED ON JUNE 23, 2020.

THE SURVEYOR HAS RELIED SOLELY UPON SAID TITLE COMMITMENT FOR THE DEPICTION OF EASEMENTS, RESTRICTIONS AND OTHER MATTERS AFFECTING THIS PROPERTY. NO ADDITIONAL RESEARCH WAS PERFORMED FOR THE PURPOSE OF THIS SURVEY. ITEMS LISTED ARE WORDED ACCORDING TO SAID TITLE COMMITMENT, FOLLOWED BY SURVEYORS NOTES SHOWN IN BRACKETS [ ]

ITEM 10E, 20' ELECTRIC EASEMENT ON FRONT OF PROPERTY LINE AS SHOWN ON PLAT RECORDED IN VOLUME 8, PAGE 158, PLAT RECORDS OF HAYS COUNTY, TEXAS (TRACT 1) - [AFFECTS AS SHOWN ON EXHIBIT]

ITEM 10F, EASEMENT GRANTED SOUTHWESTERN BELL TELEPHONE COMPANY DATED FEBRUARY 9, 1942, RECORDED IN VOLUME 123, PAGE 811, OF DEED RECORDS, HAYS COUNTY, TEXAS. [MAY AFFECT - NOT VISIBLE ON GROUND]

ITEM 10G, EASEMENT GRANTED TO UNITED GAS PIPELINE COMPANY DATED JUNE 10, 1959, RECORDED IN VOL. 178, PG. 139, DEED RECORDS OF HAYS COUNTY, TEXAS AS AFFECTED BY PARTIAL RELEASES IN VOL. 1148, PG. 429, AND VOL. 2705, PG. 875 OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS. (TRACT 1) - [EASEMENT RELEASED]

ITEM 10H, EASEMENT GRANTED TO UNITED GAS PIPELINE COMPANY DATED MAY 9, 1960, RECORDED IN VOL. 182, PG. 209, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS - [AFFECTS LOT 5, BLOCK 1, R AND R SUBDIVISION SEC 2 RECORDED IN VOLUME 11, PAGE 26 PLAT RECORDS OF HAYS COUNTY, TEXAS, DOES NOT AFFECT PROPOSED 32-ACRE TRACT]

ITEM 10I, EASEMENT GRANTED TO YORK CREEK IMPROVEMENT DISTRICT, DATED JUNE 28, 1963, RECORDED IN VOL. 197, PG. 19, DEED RECORDS OF HAYS COUNTY, TEXAS. [BLANKET EASEMENT MAY AFFECT - NO PHYSICAL EVIDENCE FOUND]

ITEM 10J, EASEMENT GRANTED TO LO-VACA GATHERING COMPANY DATED APRIL 22, 1969, RECORDED IN VOL. 231, PG. 489, DEED RECORDS OF HAYS COUNTY, TEXAS. [MAY AFFECT - NO PHYSICAL EVIDENCE FOUND]

ITEM 10K, EASEMENT GRANTED TO UNITED STATES OF AMERICA, DATED JUNE 8, 1972, RECORDED IN VOL. 259, PG. 862, DEED RECORDS OF HAYS COUNTY, TEXAS - [DOES NOT AFFECT]

ITEM 10L, EASEMENT GRANTED TO CITY OF SAN MARCOS DATED NOVEMBER 10, 2004, RECORDED IN VOL. 2599, PG. 854, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS - [AFFECTS AS SHOWN ON EXHIBIT]

ITEM 10M, EASEMENT GRANTED TO CITY OF SAN MARCOS DATED DECEMBER 22, 2006, RECORDED IN VOL. 3217, PG. 487, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS - [AFFECTS AS SHOWN ON EXHIBIT]

ITEM 10N, EASEMENT GRANTED TO CITY OF SAN MARCOS DATED MAY 26, 2010 RECORDED IN VOL. 3915, PG. 454, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS - [AFFECTS AS SHOWN ON EXHIBIT]

ITEM 10O, EASEMENT GRANTED TO CITY OF SAN MARCOS DATED JUNE 4, 2010 RECORDED IN VOL. 3915, PG. 454, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS - [MAY AFFECT AS SHOWN ON EXHIBIT]

**FLOODPLAIN NOTE:**

THIS PROPERTY IS LOCATED WITHIN UNSHADED ZONE "X" (AREA OF MINIMAL FLOOD HAZARD) AS SHOWN ON THE FLOOD INSURANCE RATE MAPS NO. 48209C0477Z AND 48209C0483F EFFECTIVE 09-02-2005 AND ISSUED BY FEMA FOR HAYS COUNTY, TEXAS.

THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

**CONTROL NOTE:**

BASIS OF BEARING IS THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE [4204] NAD 83 (2011), EPOCH 2010. ALL DISTANCES SHOWN ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY USING THE SURFACE ADJUSTMENT FACTOR OF 1.00013. UNITS: US SURVEY FEET.

**SURVEYOR'S CERTIFICATE:**

Z-MODULAR DEVELOPMENT LLC AND FIRST AMERICAN TITLE GUARANTY COMPANY

I HEREBY CERTIFY THIS SURVEY WAS MADE ON THE GROUND, AND THAT THIS PLAT CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF SURVEY AND THAT THIS PROFESSIONAL SERVICE CONFORMS TO THE TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1A CONDITION II LAND TITLE SURVEY.

Garrett Cavalkolo 8/4/2020 DATE REGISTERED PROFESSIONAL LAND SURVEYOR TEXAS REGISTRATION NO. 6714 DOUCET & ASSOCIATES CC-AVALKOL@DOUCETENGINEERS.COM

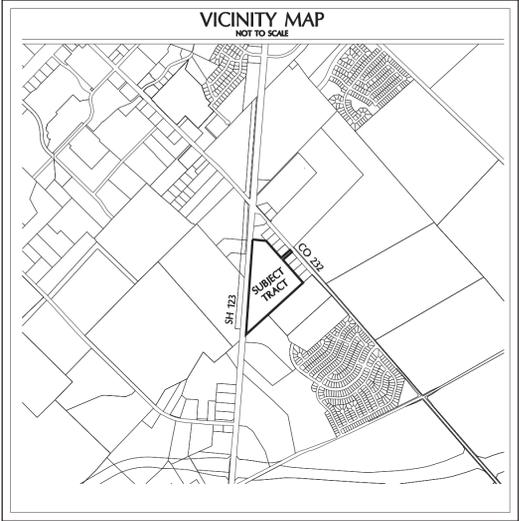
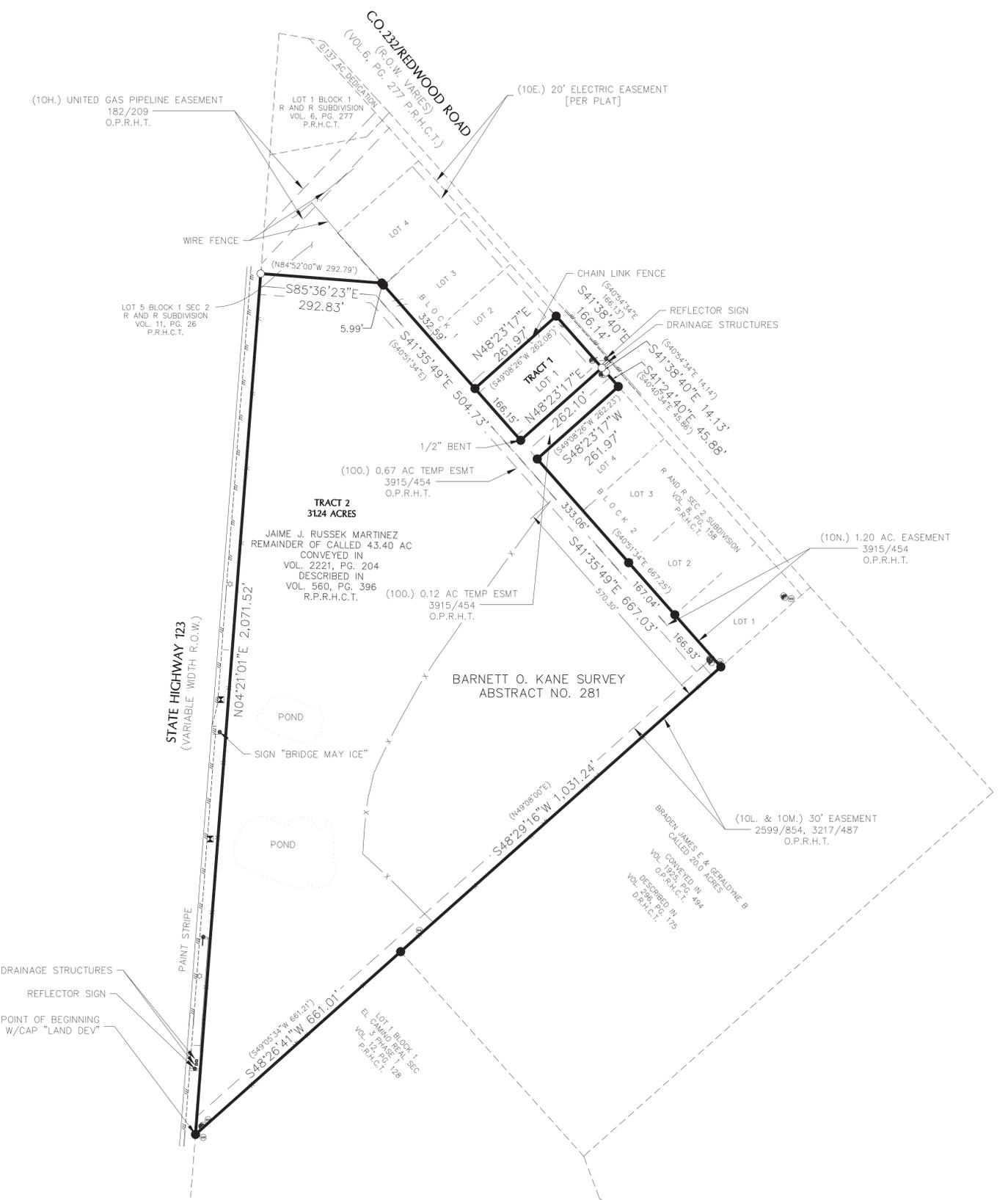


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**LEGEND**

|              |   |
|--------------|---|
| ---          | PROPOSED TRACT                              |
| ---          | ADJOINER PROPERTY LINE                      |
| x            | EXISTING WIRE FENCE                         |
| ---          | EXISTING WOOD FENCE                         |
| ---          | EDGE OF PAVEMENT                            |
| ●            | IRON ROD FOUND [UNLESS NOTED]               |
| ○            | 1/2" IRON ROD WITH "DOUCET" CAP SET         |
| ⊕            | FIRE HYDRANT                                |
| ⊙            | WATER VALVE                                 |
| ⊗            | WATER METER                                 |
| ⊞            | WASTEWATER MANHOLE                          |
| O.P.R.H.C.T. | OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS |
| P.R.H.C.T.   | PLAT RECORDS, HAYS COUNTY, TEXAS            |
| R.O.W.       | RIGHT-OF-WAY                                |
| VOL.         | VOLUME                                      |
| PG.          | PAGE  |
| ☆            | LIGHT POLE                                  |
| ⊠            | ELECTRIC PULL BOX                           |
| ↓            | DOWN GUY                                    |
| ●            | SIGN [AS NOTED]                             |
| (.....)      | RECORD INFORMATION                          |
| R.P.R.H.C.T. | REAL PROPERTY RECORDS, HAYS COUNTY, TEXAS   |
| D.R.H.C.T.   | DEED RECORDS, HAYS COUNTY, TEXAS            |



**LOT 1, BLOCK 1 R & R SUBDIVISION SECTION 2 & 31.24 ACRE TRACT  
TSPS CATEGORY 1A LAND TITLE SURVEY  
HAYS COUNTY, TEXAS**

**DA DOUCET & ASSOCIATES**  
Civil Engineering - Planning - Geospatial  
7401 B. Highway 71 W, Suite 160  
Austin, Texas 78735, Phone: (512)-583-2600  
www.doucetengineers.com  
TPEL Firm No.: 10168800  
TPE Firm No.: F-3937

Date: 08/04/2020  
Scale: 1:150  
Drawn by: PD  
Reviewer: GC  
Project: 2161-001  
Sheet: 1 OF 1  
Field Book: 531-532  
Party Chief: ADM  
Survey Date: 07/29/30

**GENERAL WARRANTY DEED**

**Date:**

**Grantor:** RUSSEK AND ROBBINS JOINT VENTURE, a partnership composed of JAIME RUSSEK MARTINEZ and ROBBY D. ROBBINS

**Grantor's Mailing Address:**

Attn: Robby Robbins  
Post Office Box 246  
San Marcos, Texas 78667-0246

**Grantee:** JAIME J. RUSSEK MARTINEZ

**Grantee's Mailing Address:**

Paseo del Bosque #5  
Col Campestre la Rosita  
Torreon, Coahuila  
27250 Mexico

**Consideration:** TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration.

**Property (including any improvements):**

Being all of Grantor's real property located in Hays County, Texas, including but not limited to the following: Being all of the remainder of that certain 43.40 acre tract of land, more or less, out of the BARNETT O. KANE SURVEY as conveyed by Edward Puls to Russek and Robbins Joint Venture by deed recorded in Volume 560, page 396, Hays County Real Property Records, not previously conveyed by Grantor.

**Reservations from Conveyance:** None

**Exceptions to Conveyance and Warranty:** Liens described as part of the Consideration and any other liens described in this deed as being either assumed or subject to which title is taken; validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Property; and taxes for 2003, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

RUSSEK AND ROBBINS JOINT VENTURE

BY: *Jaime Russek Martinez*  
JAIME RUSSEK MARTINEZ, Venturor

BY: *Robby D. Robbins*  
ROBBY D. ROBBINS, Venturor

**THIS INSTRUMENT WAS PREPARED FROM INFORMATION FURNISHED BY THE PARTIES AND NO EXAMINATION HAS BEEN MADE AND NO OPINION HAS BEEN GIVEN BY THE LAW FIRM PREPARING THIS INSTRUMENT TO ANY PARTY AS TO THE STATUS OF TITLE TO OR THE LEGAL DESCRIPTION OF THE PROPERTY.**

STATE OF TEXAS )

COUNTY OF HAYS )

This instrument was acknowledged before me on 13 MAYO, 2003, by JAIME RUSSEK MARTINEZ as Venturor of RUSSEK AND ROBBINS JOINT VENTURE, on behalf of said joint venture.

*Francisco Heriberto Garza Sotelo*  
LIC. FRANCISCO HERIBERTO GARZA SOTELO  
Notary Public, ~~State of Texas~~ No. 3  
GOMEZ PALACIO, DURANGO

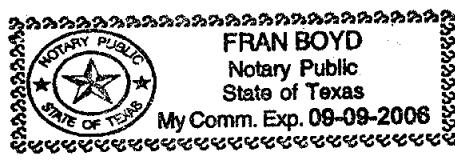


STATE OF TEXAS )

COUNTY OF HAYS )

This instrument was acknowledged before me on May 9, 2003, by ROBBY D. ROBBINS as Venturor of RUSSEK AND ROBBINS JOINT VENTURE, on behalf of said joint venture.

*Fran Boyd*  
Notary Public, State of Texas



FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS  
On: May 19, 2003 at 10:26A

Document Number: 03015136  
Amount 11.00

PREPARED IN THE OFFICE OF:  
FITZGERALD, MAJORS & STEVENS, L.L.P.  
POST OFFICE BOX 653  
SAN MARCOS, TX 78667-0653  
Tel: (512) 392-1273  
Fax: (512) 396-8539

Lee Carlisle  
County Clerk  
By  
Rose Robinson, Deputy  
Hays County

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SUBSTITUTE TRUSTEE'S DEED**

**Date:** August 2, 2016

**Deed of Trust**

**Date:** February 10, 2014

**Grantor:** WILLIAM HORAN and JONI GLOVER

**Beneficiary:** JAMIE J. RUSSEK MARTINEZ

**Trustee:** STEVE D. TAYLOR

**Substitute Trustee:** IRA M. KARP

**Recording Information:** Volume 4854, Page 247-352, Official Property Records of Hays County, Texas

**Property:**

Lot 1, Block 1, Lot 4, Block 2, R AND R SUBDIVISION SECTION TWO, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume 8, page 158, of the Plat Records of Hays County, Texas.

**Note Secured by Deed of Trust**

**Date:** February 10, 2014

**Original Principal Amount:** One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00)

**Holder:** JAIME J. RUSSEK MARTINEZ

**Borrower:** WILLIAM HORAN and JONI GLOVER

**Date of Sale of Property (first Tuesday of Month):** August 2, 2016

**Time Sale or Property Began:** 11:27 A.M.

**Place of Sale of Property:** The sale will be conducted in the area of the courthouse designated by the Commissioner's Court of said county, pursuant to Section 51.002 the Texas Property code as amended; if no area is designated by the Commissioner's Court, the sale will be conducted in the area adjacent (next) to location where this notice was posted.

Buyer: JAIME RESSEK MARTINEZ

Buyer's Mailing Address: c/o LAW OFFICES OF IRA M. KARP

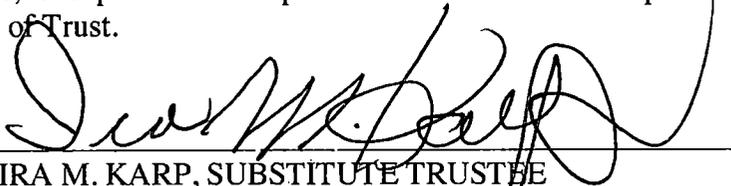
Amount of Sale: \$131,900.00 320 LEXINGTON AVE  
SAN ANTONIO, TX 78215

Grantor conveyed the property to Trustee in trust to secure payment of the note, but Grantor has defaulted in performing the obligations of the Deed of Trust and Beneficiary has directed the duly appointed Substitute Trustee to enforce the trust.

Notices stating the time, place, and terms of sale of the property were posted and filed, as required by § 51.002 of the Texas Property Code, and other requirements of that statute have been met. As required by the statute and by the Deed of Trust, the Substitute Trustee sold the property to the Buyer, who was the highest bidder at the public auction, for the amount of sale. The sale began at the time specified above and was concluded by 4:00 p.m. of the same day.

As shown by the Affidavit attached to this instrument and incorporated in it by this reference, Holder/Beneficiary either personally or by agent served notice of the sale to each debtor required by statute in compliance with § 51.002 of the Texas Property Code.

Substitute Trustee, by the authority conferred by Holder/Beneficiary and by the Deed of Trust, subject to the prior liens and other exceptions to conveyance and warranty in the Deed of Trust and for the amount of sale paid by Buyer as consideration, grants, sells, and conveys the property to Buyer, "AS IS, WHERE IS, AND WITH ALL FAULTS", together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Buyer, Buyer's heirs, executors, administrators, and successors, or assigns forever. Substitute Trustee binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Buyer and Buyer's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the prior liens and other exceptions to conveyance and warranty in the Deed of Trust.

  
\_\_\_\_\_  
IRA M. KARP, SUBSTITUTE TRUSTEE

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on the 2nd day of August, 2016, by Ira M. Karp, as Substitute Trustee.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas

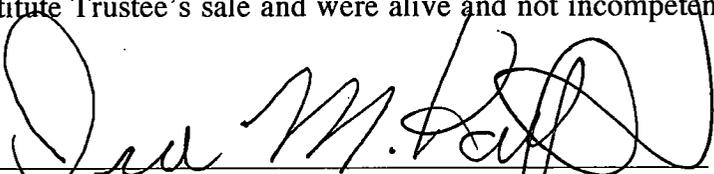
**AFFIDAVIT OF GIVING NOTICE TO DEBTOR AND IRS  
AND AFFIDAVIT OF MILITARY STATUS**

**Date:** August 2, 2016

**Affiant:** IRA M. KARP, Substitute Trustee

Affiant on oath swears that the following statements are true:

1. This affidavit is made with respect to the foreclosure of the Deed of Trust that occurred on August 2, 2016.
2. Attached to this Affidavit is a copy of the Notice of Trustee's Sale, file-stamped by the County Clerk's Office. Affiant posted or caused to be posted a copy of the Notice of Trustee's Sale at the place designated in the notice.
3. The Trustee's sale took place on August 2, 2016, at approximately the time and place as reflected in the Substitute Trustee's Deed and at the place at the courthouse designated in the notice as required by law and was performed in strict accord with the terms of the Deed of Trust.
4. To the best of my knowledge and belief, proper notice of default was served prior to acceleration of the indebtedness. All obligations and duties of the mortgagee/holder were performed in the manner required by law and all notices were served by certified mail, return receipt requested, on each debtor at the last known address of each such debtor.
5. After such continued default and at least twenty-one (21) days before the resulting Trustee's sale, Affiant either personally or by agent gave proper notice of the sale to every debtor required by statute, in strict compliance with the provisions of the Deed of Trust and the requirements of § 51.002 of the Texas Property Code.
6. To the best of my knowledge and belief, the mortgagors holding an interest in the property described in the attached Substitute Trustee's Deed were not members of the Armed Forces of the United States of America and had not been members of any such entities for at least twelve (12) months prior to the date of the Substitute Trustee's sale and were alive and not incompetent on the date of such sale.

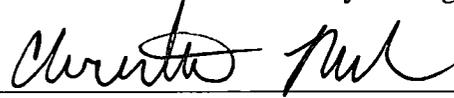
  
 \_\_\_\_\_  
 IRA M. KARP, SUBSTITUTE TRUSTEE

STATE OF TEXAS           §

COUNTY OF BEXAR       §

SWORN TO AND SUBSCRIBED before me, the undersigned Notary Public, on this day personally appeared IRA M. KARP, Substitute Trustee, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2nd day of August, 2016.

  
 \_\_\_\_\_  
 Notary Public in and for the State of Texas.



FILED  
HAYS COUNTY, TEXAS  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
JUL 12 2016

*[Signature]*  
COUNTY CLERK

**NOTICE OF SUBSTITUTE TRUSTEE'S SALE**

WHEREAS, on the 10th day of February, 2014, WILLIAM HORAN and GLOVER, executed and delivered a Deed of Trust conveying to STEVE D. TAYLOR, TRUSTEE, the real estate hereinafter described, to secure JAIME J. RUSSEK MARTINEZ, in the payment of a debt therein described, said Deed of Trust being recorded in Volume 4854, Pages 247-352, Real Property Records of Hays County, Texas; and

WHEREAS, the current owner and holder of said debt, JAIME J. RUSSEK MARTINEZ, has requested the undersigned to sell said property to satisfy said indebtedness.

NOW, THEREFORE, NOTICE IS HEREWITH GIVEN that on Tuesday, August 2<sup>nd</sup>, 2016, between ten o'clock A.M. and four o'clock P.M., the undersigned or Stewart J. Alexander as Substitute Trustee will sell said real estate between ten o'clock A.M. and four o'clock P.M., beginning no later than 1 p.m. and no later than three hours thereafter, I will sell said real estate at the County Courthouse in Hays County to the highest bidder for cash. The sale will be conducted in the area of the courthouse designated by the Commissioner's Court of said county, pursuant to Section 51.002 the Texas Property code as amended; if no area is designated by the Commissioners' Court, the sale will be conducted in the area adjacent (next) to location where this notice was posted.

Said real estate is described as follows:

Lot 1, Block 1, Lot 4, Block 2, R AND R SUBDIVISION SECTION TWO, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume 8, page 158, of the Plat Records of Hays County, Texas.

**ACTIVE MILITARY SERVICE NOTICE**

**Assert and protect your rights as a member of the armed forces of the United States. If you or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately.**

Witness my hand this 21<sup>st</sup> day of June, 2016.

*[Signature]*  
\_\_\_\_\_  
IRA M. KARP, SUBSTITUTE TRUSTEE

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### OWNER'S CONSENT TO ANNEXATION OF LAND

**Date:** \_\_\_\_\_, 20\_\_\_\_

**City:** City of San Marcos, Texas, a home rule municipal corporation

**Owner:** Jaime J. Russek Martinez, 910 Rio Verde, New Braunfels, TX 78130

**Property:** 31.24 acres out of the Barnett O. Kane Survey Abstract Number 281, Hays County, Texas

---

Owner petitioned the City to initiate proceedings to conditionally annex the Property. Owner acknowledges and agrees that, in connection with annexation of the Property:

1. Owner does not wish to enter into a development agreement with the City under Section 212.172 and has declined the offer by the City of such a development agreement.
2. Unless specifically authorized by a written agreement with Owner approved by the City Council under applicable ordinances, the City has no obligation to extend water, wastewater, or electric utility services, roads, or other infrastructure to the Property at the City's expense, and the City has made no offers, representations or promises that the City will, at the City's expense, extend water, wastewater, or electric utility services, roads, or other infrastructure to the Property. Such extensions to the Property shall be made available in the same manner and on the same basis as available to other areas of the City, whereby it shall be Owner's sole obligation, and at Owner's sole expense, to construct and install all infrastructure necessary to extend such services to the Property under applicable ordinances.
3. Owner waives any and all rights of Owner to assert any claim or demand, or to file suit against, and covenants not to sue, the City on the basis that the annexation of the Property by the City is invalid, void or voidable, in whole or in part.
4. This consent is subject to the annexation ordinance adopted by the City with respect to the Property providing that its effectiveness is conditioned on Jaime J. Russek Martinez conveyance of the Property to Z-Modular Development, LLC on or before October 20, 2022.

5. This instrument is made and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings concerning this instrument shall lie in State courts having jurisdiction located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

6. If any word, phrase, clause, sentence, or paragraph of this instrument is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this instrument will continue in force if they can be given effect without the invalid portion.

7. This instrument may be recorded in the Official Public Records of the County or Counties in which the Property is located and is binding on Owner's successors, heirs and assigns, and any future owners of the Property.



## DECLINATION OF OFFER OF DEVELOPMENT AGREEMENT

The attached Development Agreement was offered by the City of San Marcos to the owner of the property subject to the following application/petition (check one):

Out of City Utility Connection of Extension Application

Petition for Annexation (without OCU Request)

By signing below, the owner of the subject property declines the offer to enter into such Development Agreement.

OWNER (Entity):

By:

My Self.

Name:

Jaime J. Russek Martinez

Title:

Owner

Date:

09/21/2020

**DEVELOPMENT AGREEMENT PURSUANT TO  
CHAPTERS 43 AND 212 OF THE TEXAS LOCAL GOVERNMENT CODE**

This Development Agreement (the “Agreement”) is entered into pursuant to Section 43.016 and 212.172 of the Texas Local Government Code (“LGC”) by and between the City of San Marcos, Texas (the “City”) and the undersigned property owner(s) (the “Owner”). The term “Owner” includes all owners of the Property.

**WHEREAS**, the Owner owns a parcel of real property (the “Property”) in \_\_\_\_\_ County, Texas which is more particularly and separately described in the attached Exhibit “A” which is made a part of this Agreement and incorporated herein; and

**WHEREAS**, the City desires to annex the Property; and

**WHEREAS**, the Owner desires to have the Property remain in the City’s extraterritorial jurisdiction (“ETJ”), in consideration for which the Owner agrees to enter into this Agreement; and

**WHEREAS**, this Agreement is entered into pursuant to Sections 43.016 and 212.172, LGC, in order to address the desires of the Owner and the procedures of the City; and

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**SECTION 1.** The City guarantees the continuation of the ETJ status of the Owner’s Property, its immunity from annexation by the City, and its immunity from City property taxes, for the term of this Agreement, subject to the provisions of this Agreement. Except as provided in this Agreement, the City agrees not to annex the Property, agrees not to institute proceedings to annex the Property, and further agrees not to include the Property in a statutory annexation plan for the term of this Agreement. However, if the Property is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Property pursuant to the provisions of Chapter 43, LGC.

**SECTION 2.** The Owner covenants and agrees not to use the Property for any use other than for agriculture, wildlife management, and/or timber land consistent with Chapter 23, Texas Tax Code, except for existing single-family residential use of the Property without the prior written consent of the City.

The Owner covenants and agrees that it will not file for a concept plat, subdivision plat, or related development document for the Property with \_\_\_\_\_ County or the City until the Property has been annexed into, and zoned, or another development agreement has been entered into, by the City. This provision does not include permits for improvements, repairs, or utility connections to structures existing on the execution date of this Agreement.

The Owner covenants and agrees not to construct, or allow to be constructed, any buildings on the Property that would require a building permit if the Property were in the city limits, until the

Property has been annexed into, and zoned, or another development agreement has been entered into, by the City; however, the Owner may construct an accessory structure or addition to an existing structure that is consistent with the use of the Property for agriculture, wildlife management, and/or timber land or as an existing single-family residence provided that same is done in compliance with all applicable City ordinances and codes.

The Owner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect, and the Owner who signs this Agreement covenants and agrees, jointly and severally, to indemnify, hold harmless and defend the City against any and all legal claims, by any person claiming an ownership interest in the Property who has not signed the Agreement, arising in any way from the City's reliance on this Agreement.

**SECTION 3.** The Owner acknowledges that if any concept plat, subdivision plat, or related development document is filed in violation of this Agreement, or if the Owner commences development of the Property in violation of this Agreement, then in addition to the City's other remedies, such act will constitute a petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the City Council of the City. The Owner agrees that such annexation will be voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner.

Furthermore, Owner hereby waives any and all vested rights and claims that it may have under Section 43.002(a)(2) and Chapter 245, LGC, that would otherwise exist by virtue of any actions Owner has taken in violation of Section 2 herein.

**SECTION 4.** The City is authorized to enforce all of the City's regulations and planning authority that do not materially interfere with the use of the Property for agriculture, wildlife management, or timber, in the same manner the regulations are enforced within the City's boundaries. The City states and specifically reserves its authority pursuant to Chapter 251, LGC, to exercise eminent domain over property that is subject to a Chapter 43 and/or Chapter 212 development agreement.

**SECTION 5.** The term of this Agreement (the "Term") is fifteen (15) years from the date that the City Manager's signature to this Agreement is acknowledged by a notary public. The parties to this Agreement may renew or extend the Term only by mutual written agreement, subject to any other agreed terms and conditions.

This Agreement is deemed to be a petition for voluntary annexation upon the expiration of the Term and the Property will be subject to annexation at the discretion of the City Council of the City. Thus, without further consent or petition by the Owner, the City may initiate the process for voluntary annexation of the Property: a) before the end of the Term, to be effective after the last day of the Term; or b) at any time after the end of the Term. In connection with annexation pursuant to this section, the Owners hereby waive any vested rights they may have under Section 43.002(a)(2) and Chapter 245, LGC, that would otherwise exist by virtue of any plat or construction that any of the owners may initiate during the time between the expiration of this Agreement and the institution of annexation proceedings by the City.

**SECTION 6.** Property annexed pursuant to this Agreement will be zoned in accordance with the City's Code of Ordinances and applicable law.

**SECTION 7.** Owner recognizes that for purposes of Section 43.003(2), LGC, or another law, including the City's Charter or an ordinance of the City, the Property that is the subject of this Agreement is, for the purposes relating to the City's authority to annex an area adjacent to the City, considered adjacent or contiguous to the City.

**SECTION 8.** Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee, and shall give written notice of the sale or conveyance to the City. Furthermore, the Owner and the Owner's heirs, successors, and assigns shall give the City written notice within 14 days of any change in the agricultural exemption status of the Property. A copy of either notice required by this section shall be forwarded to the City at the following address:

City of San Marcos  
Attn: City Manager  
630 East Hopkins Street  
San Marcos, Texas 78666

With a copy to:

City of San Marcos  
Attn: Director of Planning  
630 East Hopkins Street  
San Marcos, Texas 78666

**SECTION 9.** This Agreement shall run with the Property and be recorded in the real property records of \_\_\_\_\_ County, Texas.

**SECTION 10.** If a court of competent jurisdiction determines that any covenant of this Agreement is void or unenforceable, including the covenants regarding voluntary annexation, then the remainder of this Agreement shall remain in full force and effect.

**SECTION 11.** This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure by any Owner or the City to enforce any covenant shall in no event be deemed a waiver of the right to do so thereafter.

**SECTION 12.** No subsequent change in the law shall affect the validity or enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

**SECTION 13.** This Agreement shall be construed in accordance with the laws of the state of Texas. Venue for any dispute or matter arising under this Agreement shall be in the state courts in \_\_\_\_\_ County, Texas, or if in federal court, the United States District Court for the Western District of Texas, Austin Division.

**SECTION 14.** This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Sections 3, 4 and 5 herein.

**SECTION 15.** This Agreement shall be recorded in the Official Public Records of the County in which the Property is located, and is binding upon the Owner's heirs, successors and assigns and future owners of the Property.

**SECTION 16.** This Agreement may be separately executed in any number of individual counterparts, and such counterpart signatures, when assembled together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** this Agreement shall become effective as of the date of the last properly authorized signature.

**[SIGNATURES ON NEXT PAGE]**

SAMPLE

**CITY OF SAN MARCOS, TEXAS:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Manger

**STATE OF TEXAS** §  
§  
**COUNTY OF** \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by \_\_\_\_\_, City Manager of the City of San Marcos, in such capacity, on  
behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

SAMPLE

**OWNER (Individual):**

\_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

SAMPLE



**EXHIBIT A**  
[ATTACH PROPERTY DESCRIPTION]

SAMPLE



## Legislation Text

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**File #:** ID#20-704, **Version:** 1

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**AGENDA CAPTION:**

Consider approval, by motion, to move the December 1, 2020 Regular City Council meeting, due to the Election Runoff, to Wednesday, December 2, 2020, and provide direction to Staff.

**Meeting date:** October 20, 2020

**Department:** City Clerk

**Amount & Source of Funding**

**Funds Required:** Click or tap here to enter text.

**Account Number:** Click or tap here to enter text.

**Funds Available:** Click or tap here to enter text.

**Account Name:** Click or tap here to enter text.

**Fiscal Note:**

**Prior Council Action:** Click or tap here to enter text.

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

The General Election will occur on November 3, 2020 and the runoff for this election is scheduled for December 1<sup>st</sup>. Staff is requesting Council approval to change the December 1<sup>st</sup> regular City Council meeting to Wednesday, December 2 to accommodate for this runoff.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation**



## Legislation Text

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**File #:** ID#20-727, **Version:** 1

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**AGENDA CAPTION:**

Consider applications from interested citizens for service on an ad hoc committee to study the use of force policies of the San Marcos Police Department and make recommendations to the Chief of Police and City Council, hold discussion and make appointments to the committee, and provide direction to staff.

**Meeting date:** October 20, 2020

**Department:** Police - Interim Chief Bob Klett

**Amount & Source of Funding**

**Funds Required:** N/A

**Account Number:** N/A

**Funds Available:** N/A

**Account Name:** N/A

**Fiscal Note:**

**Prior Council Action:** N/A

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

N/A

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu

below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

During the City Council meeting held on September 1, 2020, the Council provided direction to staff to create an application for service on this committee and publish it for citizen interest through September 30, 2020. Additionally, Council further directed an item to be placed on the September 15, 2020 agenda that will allow Council to discuss the operational plan of this committee and provide direction to staff. After some deliberation about the process that should be used for nomination of members, Council decided to use the process most often used to establish board and commission membership. The process involves the Council members being provided the entire list of applicants in advance of the meeting and then taking turns nominating members from that list as they are called upon by the Mayor. Council further provided direction that this process would be handled at the October 7, 2020 regular Council meeting for the purpose of establishing the committee.

**Council Committee, Board/Commission Action:**

The Chief's Advisory Panel has recommended that all findings or recommendations of this committee be presented to them for additional review before a final Chief's report is made to Council.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Appoint 15 San Marcos residents to an ad hoc committee charged with studying the use of force policies of the San Marcos Police Department and making recommendations to the Chief of Police and City Council.



## Legislation Text

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**File #:** ID#20-728, **Version:** 1

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**AGENDA CAPTION:**

Consider applications from interested citizens for service on a Comprehensive Plan Rewrite Steering Committee charged with assisting in the City's Comprehensive Plan rewrite; hold discussion and make appointments to the committee, and provide direction to Staff.

**Meeting date:** October 20, 2020

**Department:** Planning and Development Services

**Amount & Source of Funding**

**Funds Required:** n/a

**Account Number:** n/a

**Funds Available:** n/a

**Account Name:** n/a

**Fiscal Note:**

**Prior Council Action:** n/a

**City Council Strategic Initiative:**

N/A

**Comprehensive Plan Element (s):**

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:**

Vision San Marcos - A River Runs Through Us

**Background Information:**

The City is moving forward with the rewrite of its Comprehensive Plan. City Council recently approved the contract with the selected consultant, Moore, Iacofano, and Goltsman (MIG), and City staff just held its internal kickoff meeting with them on August 27, 2020.

One of the next steps in the process is to appoint a steering committee that will oversee the project and the creation of the plan. This committee will be a working group that aids City staff and the consultant team with both the public process and the plan's substance. The committee will meet about eight times during the project, and include approximately 20-30 people who, together, represent the broad interests that exist within the community.

The role of the members of the Steering Committee will be as follows:

- The members of this committee will be asked to serve as a representative to various constituents and individuals in their respective networks, encouraging participation in the public process, while also sharing some of the more technical insights developed by the committee, as appropriate.
- The members of this committee will be asked to provide input throughout the process, as well as to share constructive feedback, both in the form of their individual expertise, as well as representative of those they are representing.
- Finally, as the plan moves toward adoption, members will be asked to champion the plan through the adoption process, sharing their unique perspective of having served on the committee and playing a key role in building consensus around the plan's vision, goals, and recommendations.

At the 10/7/2020 City Council meeting, the City Council chose the following structure for the committee:

- Up to 21 members appointed by the City Council (3 members for each City Councilmember) - Must be residents of the city
- Two City Councilmembers
- Two Planning and Zoning Commission members
- One representative from Hays County
- One representative from San Marcos Consolidated ISD
- One representative from Texas State University
- One representative from the San Marcos Chamber of Commerce

**Council Committee, Board/Commission Action:**

It is anticipated that the members from the Planning and Zoning Commission will be selected at their 10/13/20 meeting.

**Alternatives:**

n/a

**Recommendation:**

Appoint the members to the committee based on the identified structure.



## Legislation Text

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**File #:** ID#20-675, **Version:** 1

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**AGENDA CAPTION:**

Receive a Staff update on CARES Funding, discuss program strategy and options for Coronavirus Relief Fund (CRF) and Community Development Block Grant - Coronavirus (CDBG-CV) Round Three funding, and provide direction to staff.

**Meeting date:** October 20, 2020

**Department:** Planning and Development Services

**Amount & Source of Funding**

**Funds Required:** [Click or tap here to enter text.](#)

**Account Number:** [Click or tap here to enter text.](#)

**Funds Available:** [Click or tap here to enter text.](#)

**Account Name:** [Click or tap here to enter text.](#)

**Fiscal Note:**

**Prior Council Action:** On June 16, 2020, by Resolution 2020-128R the City Council authorized the submission of the terms and conditions and related documents to accept funds from the CRF. On June 16, 2020, by Resolution 2020-131R, City Council amended the 2019 Community Development Block Grant (CDBG) Action Plan to accept \$425,261 in CDBG - Coronavirus (CDBG-CV), and to allocate most of the funding to programs. On August 4, 2020, by Resolution 2020-163R, City Council approved allocation of the remaining CDBG-CV funding.

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

N/A

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

Economic Development - Choose an item.

Environment & Resource Protection - Choose an item.

Land Use - Choose an item.

- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provided funding to both of the following:

- U.S. Department of the Treasury - Texas Department of Emergency Management (TDEM) - Coronavirus Relief Fund (**CRF**) - \$3,655,630
- U.S. Housing and Urban Development Department (HUD) - Community Development Block Grant - Coronavirus (**CDBG-CV**) - \$567,825

**Coronavirus Relief Fund (CRF)**

The general requirements for the CRF program indicate that the eligible expenses:

- Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- Were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
- Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.
  - The activity that spends the funds must happen before December 30, 2020. The bills must be paid by March 30, 2021.

The CRF funds came through the CARES Act → Federal Treasury → Texas Department of Emergency Management (TDEM) → City of San Marcos. San Marcos has been allocated \$3,655,630. The funding provided through this program is broken down into two separate categories and spending must be maintained at a  $\geq 75\%$  /  $\leq 25\%$  spending ratio regardless of how much you spend.

At least 75% of the funding must be spent in the following areas:

- Medical expenses
- Public health expenses
- Payroll expenses for public safety, public health, health care, human services, and similar employees
  - Substantially Dedicated - determine a threshold above which particular public safety employees are substantially dedicated and cover all the costs of those employees
  - Substantially Different - if unbudgeted - hours spent by other public safety and non-public safety

employees on COVID-19 response, like the EOC, facilities employees, etc.

In terms of payroll expenses, it has been further clarified that “as a matter of administrative convenience in light of the emergency nature of this program, a local government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.”

The remaining expenses, not to exceed 25% can be spent on the following areas:

- Expenses of actions to facilitate compliance with COVID-19-related public health measures
- Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency
- Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund’s eligibility criteria

### Community Development Block Grant - Coronavirus (CDBG-CV)

The Coronavirus Aid, Relief, and Economic Security (CARES) Act also provided funding to the US Department of Housing and Urban Development that has been allocated in three rounds. In Round One, the City of San Marcos received \$425,261. Round Two was allocated to the states and insular areas. In Round Three, the City was notified on September 11, 2020, that it has received an additional \$567,825.

In response to the Round One allocation, City Council funded the following programs:

| Amount    | Activity  | Agency  |
|-----------|---|---|
| \$200,000 | COVID-19 Small Business Recovery                    | Chamber, City Economic Development, Main Street Program |
| \$55,600  | Advocacy Services for Abused and Neglected Children | Court Appointed Special Advocates                       |
| \$105,530 | Increased or Improved COVID-19 Testing              | Hays County   |
| \$64,131  | Administration                                      | City Staff  |

The Round Three allocation of \$1.9888 billion was targeted as follows:

- Communities with high risk of virus spread, especially neighborhoods with larger household sizes, overcrowding, and higher unemployment.
- Communities with large numbers of Very Low-Income Renters pre-pandemic since they are most likely at risk for missing rent payments during an economic downturn.
- Communities with businesses not reopening or failing, especially those with specified industries that have unemployment rates more than 1.5 times the national average; these included:

- 1) Mining, quarrying, and oil and gas extraction;
- 2) Arts, entertainment, and recreation; and
- 3) Accommodation and food services.

- Communities where the employees of the closed and struggling businesses live.

Specifically, the Round Three allocation formula targets:

- 40% of funds toward households whose characteristics are known to put them at higher risk of transmission of coronavirus or higher risk of eviction due to likely limited means to sustain a long-term economic disruption.
- 60% for economic and housing market disruptions, specifically unemployment; in particular, communities with a high share of the population employed in the three industries listed above.

City Staff has consulted with the Texas Homeless Network, Austin Apartment Association, Southside Community Center, San Marcos Area Chamber of Commerce, Hays-Caldwell Women's Center, Hays County Emergency Management to ask about needs in the community and program suggestions. The majority of those consulted expressed concern for both small businesses and individuals, regardless of the interviewee's particular program area.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

**Recommendation for CRF:**

- **Public health expenses = \$400,000**
  - PPE, sanitizer stations, and fencing - \$200,000 (already spent)
  - HVAC system for buildings - \$200,000
- **Payroll expenses = \$2,416,705**
- **Economic support = \$298,925**
  - School district technology - \$98,925 (approved by resolution)
  - Utility billing assistance - \$200,000
- **Function of government = \$540,000**
  - City phone system - \$500,000
  - City learning management system - \$40,000
- **TOTAL = \$3,655,630 (100%)**

**Recommendation for CDBG-CV:**

Based on consultations with local agencies, staff recommends creating an eviction prevention program for renters, homeowners, and/or small businesses. While the specific parameters of the program still need to be developed, below are some following suggestions of how the program could operate:

- Eligible expenses could include rent / mortgage / utility payments
- The percent of funding could be proportionate to the number of eligible applications received
- To qualify for individuals, their incomes would need to be < 60% Area Median Income (\$58,560 for a family of 4)
- To qualify for businesses, they would need to have less than 50 employees
- Given the demand, the funds could be awarded either by lottery or evaluation of need
- Third parties would be hired to create and administer each program

In terms of the funding, the following would be the categories:

- **Eviction prevention program = \$454,260**
- **Administration costs = \$113,565 (20%)**
- **TOTAL = \$567,825**

# CITY COUNCIL MEETING

Tuesday, October 20, 2020

## Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding

Staff Presentation  
for Discussion and Direction

## Types of CARES Act funding

- **U.S. Department of the Treasury - Texas Department of Emergency Management (TDEM) - Coronavirus Relief Fund (CRF) - \$3,655,630**
- **U.S. Housing and Urban Development Department (HUD) - Community Development Block Grant – Coronavirus (CDBG-CV) - \$567,825**

**The intent of this presentation is to provide an update regarding CRF and CDBGV-CV monies and seek City Council direction regarding next steps and possible programs for spending these funds.**

## CRF – General requirements

- **Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);**
- **Were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and**
- **Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.**
  - The activity that spends the funds must happen before December 30, 2020. The bills must be paid by March 30, 2021.

## CRF – Amount

- CARES Act → Federal Treasury → Texas Department of Emergency Management (TDEM) → San Marcos
- San Marcos has been allocated \$3,655,630
- Funding is broken down into two separate categories and spending must be maintained at a  $\geq 75\%$  /  $\leq 25\%$  spending ratio regardless of how much you spend
  - $\geq 75\%$ : \$2,741,723
  - $\leq 25\%$ : \$913,907

## CRF – Eligible costs for the $\geq 75\%$

- **Medical expenses**
- **Public health expenses**
- **Payroll expenses for public safety, public health, health care, human services, and similar employees**
  - Substantially Dedicated - determine a threshold above which particular public safety employees are substantially dedicated and cover all the costs of those employees - Further guidance provided on next slide
  - Substantially Different – if unbudgeted - hours spent by other public safety and non-public safety employees on COVID-19 response, like the EOC, facilities employees, etc.

# CRF – Payroll expenses

**Question 34:** During this event, some jurisdictions' governmental departments have only been open to the public Monday-Wednesday-Friday. However, some employees in those departments have been required to work performing Covid-19 related tasks on Tuesday and Thursday. Are payroll expenses for these employees an eligible cost?

## Answer

The use of payments from the Fund to cover payroll or benefits expenses of public employees are limited to those employees whose work duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. As a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise. CRF funding may be used for non-public health and public safety employees if there is adequate documentation available to demonstrate they were working on COVID-19 related tasks and those tasks took up the majority of each employee's time.

## CRF – Eligible costs for the $\leq 25\%$

- **Expenses of actions to facilitate compliance with COVID-19-related public health measures**
- **Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency**
- **Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria**

CRF – Recommendation  $\geq$  \$2,741,723 ( $\geq$  75%)

- **Medical expenses = \$0**
- **Public health expenses = \$400,000**
  - PPE, sanitizer stations, and fencing - \$200,000 (already spent)
  - HVAC system for public building(s) - \$200,000
- **Payroll expenses = \$2,416,705** (the City will have more than this amount)
- **TOTAL = \$2,816,705 (77%)**



CRF – Recommendation  $\leq$  \$913,907  $\leq$  25%

- **Facilitating compliance with public health measures = \$0**
- **Economic support = \$298,925**
  - \$98,925 for computers/technology for the school district (approved by resolution)
  - \$200,000 for utility billing assistance for businesses and non-profits
- **Reasonably necessary to the function of government that satisfy the eligibility criteria = \$540,000**
  - \$500,000 for city phone system
  - \$40,000 for learning management system
- **TOTAL = \$838,925 (23%)**



## CRF – Recommendation TOTAL

- **Public health expenses = \$400,000**
  - PPE, sanitizer stations, and fencing - \$200,000 (already spent)
  - HVAC system for buildings - \$200,000
- **Payroll expenses = \$2,416,705**
- **Economic support = \$298,925**
  - School district technology - \$98,925 (approved by resolution)
  - Utility billing assistance - \$200,000
- **Function of government = \$540,000**
  - City phone system - \$500,000
  - City learning management system - \$40,000
- **TOTAL = \$3,655,630 (100%)**

# Other possible activities

- **Personal protective equipment (PPE) for the community**
  - City already has masks available do distribute to community

## Next Steps: CRF

|                 |   |
|-----------------|---|
| <b>10/20/20</b> | <b>Obtain City Council direction</b>                                      |
| <b>11/13/20</b> | <b>Ensure documentation practices are in place for submission to TDEM</b> |
| <b>12/30/20</b> | <b>Final date for CRF related activity</b>                                |
| <b>3/31/21</b>  | <b>Final payments</b>   |

## CARES Act Funding through HUD: CDBG-CV

| <b>ROUND ONE:</b>                                      | <b>Funded</b>    |
|--|------------------|
| 1. COVID-19 Small Business Recovery                    | \$200,000        |
| 2. Advocacy Services for Abused and Neglected Children | \$55,600         |
| 3. Hays County Enhanced Testing                        | \$105,530        |
| 4. Administration                                      | \$64,131         |
| <b>TOTAL</b>   | <b>\$425,261</b> |

**ROUND TWO: To the states**

**ROUND THREE: \$567,825 to San Marcos**

# CDBG-CV Federal Allocation Goals

## **More funding allocated to communities with:**

- **high risk of virus spread due to overcrowding or unemployment**
- **large numbers of very low-income renters**
- **businesses not reopening or failing, especially in specified industries**
- **homes of the employees of closed and struggling businesses**
  
- **Primary Concerns:**
  1. **Eviction prevention**
  2. **Impact on businesses and employment**



## CDBG-CV Local Consultations about Needs

- **Texas Homeless Network**
- **Austin Apartment Association**
- **Southside Community Center**
- **San Marcos Area Chamber of Commerce**
- **Hays-Caldwell Women's Center**
- **Hays County Emergency Management**
  
- **Primary Concerns:**
  1. **Eviction prevention**
  2. **Impact on businesses and employment**

## Recommendation for CDBG-CV

### **Eviction Prevention for Renters, Homeowners, and/or Small Businesses**

- **Rent / Mortgage / Utilities**
- **% of funding proportionate to number of eligible applications received**
- **Individuals < 60% Area Median Income (\$58,560 for a family of 4)**
- **Businesses < 50 employees**
- **Awarded either by lottery or evaluation of need**
- **Third parties to create and administer each program**

### Possible Additional Funding: Texas Eviction Diversion Program

- **CDBG-CV funding through the Texas Department of Housing and Community Affairs (TDHCA)**
- **1<sup>st</sup> round by the end of the year – automatic**
- **Competitive round early 2021**

## Next Steps: CDBG-CV

|  |   |
|--|---|
| <b>After Council Direction</b>                 | <b>Required 5-day comment period on proposed programs</b>         |
| <b>11/17/20</b>                                | <b>Public hearing and City Council vote on proposed programs</b>  |
| <b>After Council Vote on proposed programs</b> | <b>Notice of Funding Availability</b>                             |
| <b>December</b>                                | <b>Selected agency contract awarded – (City Manager approved)</b> |
| <b>January</b>                                 | <b>Marketing</b>  |
| <b>February</b>                                | <b>Application review and payments</b>                            |

# City Council direction requested on:

## CRF:

- **Public health expenses = \$400,000**
  - PPE, sanitizer stations, and fencing - \$200,000 (already spent)
  - HVAC system for buildings - \$200,000
- **Payroll expenses = \$2,416,705**
- **Economic support = \$298,925**
  - School district technology - \$98,925 (approved by resolution)
  - Utility billing assistance - \$200,000
- **Function of government = \$540,000**
  - City phone system - \$500,000
  - City learning management system - \$40,000

## CDBG-CV:

- **Eviction prevention program = \$454,260**
  - Renters
  - Homeowners, and/or
  - Small businesses
- **Administration costs = \$113,565 (20%)**

**RESOLUTION NO. 2020-128R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AUTHORIZING THE SUBMISSION OF THE TERMS AND CONDITIONS AND CERTIFICATION DOCUMENTS TO THE STATE OF TEXAS DIVISION OF EMERGENCY MANAGEMENT FOR FUNDING FROM THE FEDERAL CORONAVIRUS RELIEF FUND; AUTHORIZING THE CITY MANAGER TO SUBMIT THE REQUIRED DOCUMENTATION AND ACCEPT FUNDS FROM THE CORONAVIRUS RELIEF FUND AS AUTHORIZED EXPENDITURES RELATED TO COVID-19 RELIEF ACTIVITIES DURING THE PERIOD FROM MARCH 1, 2020 THROUGH DECEMBER 30, 2020; AND DECLARING AN EFFECTIVE DATE.**

**RECITALS:**

1. The City of San Marcos desires to receive its allocated payment of federal funds administered through the State of Texas in the Texas Division of Emergency Management through the Federal Coronavirus Relief Fund for COVID-19 related expenses incurred by the City during the period between March 1, 2020 and December 30, 2020.

2. The City of San Marcos has expended funds in response to the COVID-19 pandemic that are eligible for reimbursement under the Federal Coronavirus Relief Fund program.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The City Council approves the submission of the terms and conditions and related documents to accept funds from the Federal Coronavirus Relief Fund to the Office of the Texas Division of Emergency Management.

**PART 2.** The City Manager or his designee is authorized to submit terms and conditions and related documents on behalf of the City and accept COVID-19 related funds.

**PART 3.** This resolution shall be in full force and effect from and after its passage.

**ADOPTED** on June 16, 2020.

  
Jane Hughson  
Mayor

Attest:

  
Tammy K. Cook  
Interim City Clerk



## Legislation Text

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**File #:** ID#20-715, **Version:** 1

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**AGENDA CAPTION:**

Receive a Staff presentation and hold discussion regarding the utility disconnections for non-payment, and provide direction to Staff.

**Meeting date:** October 20, 2020

**Department:** Finance, Melissa Neel

**Amount & Source of Funding**

**Funds Required:** Click or tap here to enter text.

**Account Number:** Click or tap here to enter text.

**Funds Available:** Click or tap here to enter text.

**Account Name:** Click or tap here to enter text.

**Fiscal Note:**

**Prior Council Action: Council agreed to halt utility service disconnections during the COVID emergency in March. On July 7, 2020 council approved extending the freeze on disconnects through the end of September 2020.**

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.

- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

In March, 2020 the City Council agreed to halt utility service disconnections for non-payment for 90 days. During July council meeting council support extending this date through Sept. 30, 2020. Currently utility disconnect remain on-hold. Staff recommends reinstating utility disconnects due to non-payment in January 2021, after the holidays.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

**Continue to not terminate services for a set period of time.**

**Recommendation:**

Extend the freeze on utility disconnects through January 2, 2021. Increase community outreach, expand customer communications as recommended.



## Resuming Utility Disconnection

- Resume Utility Disconnections – January 2021
- Community Outreach Initiatives – Nov & Dec 2020
  - On Bill Message
  - Social Media
  - Utility Bill Insert
  - Utility Lobby Signs
- Payment Plans (Available now – promote in Outreach)
  - 30, 60, 90 day payment arrangements
  - Apply deposit to outstanding balance
- Promote Utility Assistance through Community Action
- Additional Customer Communication
  - Additional language in Delinquent Notices about payment options
  - Robo Calls 2 days prior to disconnections (Initiate Jan 2021)
  - Individual Communication for frequently disconnected customers (Nov – Dec 2020)



## Utility Assistance Program Summary

- Fiscal Year 2021 funding allocation to the Utility Assistance Program \$120,000
- Changes to Community Action funding criteria went into effect August 2020 to accommodate financial impacts due to emergency situations our customers experience
- Summary of fiscal year 2020 funding allocation follows:

| Month     | Total \$    | Count |
|-----------|-------------|-------|
| 10/1/2019 | \$1,358.65  | 4     |
| 11/1/2019 | \$5,270.31  | 15    |
| 12/1/2019 | \$3,024.24  | 14    |
| 1/1/2020  | \$2,875.34  | 10    |
| 2/1/2020  | \$7,192.96  | 34    |
| 3/1/2020  | \$2,430.97  | 16    |
| 4/1/2020  | \$1,432.38  | 4     |
| 5/1/2020  | \$2,763.25  | 10    |
| 6/1/2020  | \$1,943.63  | 5     |
| 7/1/2020  | \$1,568.41  | 4     |
| 8/1/2020  | \$1,146.56  | 1     |
| 9/1/2020  | \$8,371.46  | 19    |
| Total     | \$39,378.16 | 136   |



## Legislation Text

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**File #:** ID#20-672, **Version:** 1

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**AGENDA CAPTION:**

Hold discussion on San Marcos Convention and Visitor Bureau Board Recommendation Resolution proposing to the City Council that the Second Saturday of May and October be recognized as World Migratory Bird Days; and provide direction to staff.

**Meeting date:** October 20, 2020

**Department:** Convention and Visitor Bureau

**Amount & Source of Funding**

**Funds Required:** 570.00

**Account Number:** 12024224.52620

**Funds Available:** yes

**Account Name:** Marketing

**Fiscal Note:**

**Prior Council Action:** [Click or tap here to enter text.](#)

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

Jo Ellen Korthals reached out to CVB staff to inquire of interest in becoming Bird City Texas certified, a program of Audubon Texas and Texas Parks and Wildlife Department. Bird City Texas recognizes and encourages effective and impactful native bird conservation where people live, work, and recreate. From urban centers to rural towns, each community can provide important habitat for birds, and certified communities will receive recognition and community benefits as a result of these efforts. A certification requirement is for a council resolution in support of World Migratory Bird Day.

**Council Committee, Board/Commission Action:**

**Convention and Visitor Bureau Advisory Board voted to support the recommended resolution from council. (Attachment: Resolution)**

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

The San Marcos Convention and Visitor Bureau has recommended that the City Council recognize World Migratory Bird Day and authorize staff to support the Bird City Texas application to Texas Park & Wildlife, and if approved, submit the designation fee to certify San Marcos as a "Bird City Texas," which will continue to enhance the City's reputation for leadership in protecting its natural environment including bird habitats, as well as recognize the interests of many citizens in bird conservation.

**SAN MARCOS CONVENTION AND VISITOR BUREAU ADVISORY BOARD  
RECOMMENDATION  
RESOLUTION NO. 2020-001R**

A RECOMMENDATION RESOLUTION OF THE SAN MARCOS CONVENTION AND VISITOR BUREAU TO THE CITY COUNCIL TO RECOGNIZING WORLD MIGRATORY BIRD DAYS HELD ON THE SECOND SATURDAY OF MAY AND OCTOBER

WHEREAS, migratory birds are some of the most beautiful and easily observed wildlife that enhance the community; and

WHEREAS, citizens recognize and welcome migratory songbirds as symbolic harbingers of spring and enjoy all the opportunities they have to engage in great recreational endeavors such as bird-watching and nature photography; and

WHEREAS, migrant bird species also play an important economic role in the community, naturally controlling pests and generating recreational revenue related to bird watching activities; and

WHEREAS, migratory birds and their habitats are declining throughout the Americas, facing a growing number of threats on their migration routes and in both their summer and winter homes, and

WHEREAS, public awareness and concern are crucial components of migratory bird conservation, whereupon citizens can directly contribute to maintaining healthy bird populations; and

WHEREAS, since 1993 World Migratory Bird Day (WMBD) has raised global awareness by highlighting the need for the conservation of migratory birds and their habitats;

WHEREAS, hundreds of thousands of people will observe WMBD, gathering in town squares, community centers, schools, parks, nature centers, and wildlife refuges to learn about birds, take action to conserve them, and simply to have fun, and

NOW, THEREFORE, BE IT PROCLAIMED, WMBD will be celebrated/observed in San Marcos on the second Saturday in May and October, it's observance not limited to a single day, and will provide public information about migratory bird conservation and call upon the people of San Marcos to support the protect and conserve migratory birds and their habitats in our community.

**NOW, THEREFORE, BE IT RESOLVED BY THE CONVENTION AND VISITOR BUREAU ADVISORY BOARD OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** It is recommended that the City Council accept the recommendation to recognize World Migratory Bird Day.

**PART 2.** It is recommended that the City Council accept the recommendation to hereby authorize staff to support the Bird City Texas application to Texas Park & Wildlife, and if

approved, submit the designation fee to certify San Marcos as a "Bird City Texas," which will continue to enhance the City's reputation for leadership in protecting its natural environment including bird habitats, as well as recognize the interests of many citizens in bird conservation.

**PASSED AND ADOPTED** on September 16, 2020.



John Lairsen  
Chair

Attest:



Denise Pardo  
Staff Liaison



## Legislation Text

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**File #:** ID#20-736, **Version:** 1

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**AGENDA CAPTION:**

Hold discussion on Parks and Recreation Board Recommendation Resolution 2020-02RR, supporting the implementation of healthy streets, also known as slow streets, to promote active recreation and transportation in the public right of way on low traffic neighborhood streets and to promote a multimodal network connecting greenspaces and parks, and provide direction to staff.

**Meeting date:** October 20, 2020

**Department:** Parks and Recreation, Per request by Council Members Rockeymoore, Marquez and Derrick

**Amount & Source of Funding**

**Funds Required:** N/A

**Account Number:** [Click or tap here to enter text.](#)

**Funds Available:** [Click or tap here to enter text.](#)

**Account Name:** [Click or tap here to enter text.](#)

**Fiscal Note:**

**Prior Council Action:** N/A

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services

Not Applicable

**Master Plan:** *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

**Background Information:**

On July 16, 2020 the Parks and Recreation Board received a presentation from Board Member Alex Vogt and held discussion regarding a proposal to implement a Healthy, Slow Streets program within San Marcos while some parks were closed to the public during the pandemic.

The Board provided consensus to consider a Recommendation Resolution at their next meeting in August.

On August 20, 2020 the Parks and Recreation Board approved the attached Recommendation Resolution recommending that the City Council provide direction to the City Manager to move forward with the implementation of a Healthy, Slow Street Program on equitably distributed neighborhood streets across the City. The recommended to initiate said program with a Pilot Program on a willing neighborhood street, such as Alamo Street, where a number of supporting residents currently reside. That recommendation is supported by a petition that was submitted to the City Council by MoveSM in May of 2020 and is also attached as backup material.

**Council Committee, Board/Commission Action:**

Please refer to the above information.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Click or tap here to enter text.

**RECOMMENDATION RESOLUTION NO. 2020-02RR**

**A RECOMMENDATION RESOLUTION OF THE PARKS AND RECREATION BOARD OF THE CITY OF SAN MARCOS, TEXAS SUPPORTING THE IMPLEMENTATION OF HEALTHY STREETS, ALSO KNOWN AS SLOW STREETS, TO PROMOTE ACTIVE RECREATION AND TRANSPORTATION IN THE PUBLIC RIGHT OF WAY ON LOW TRAFFIC NEIGHBORHOOD STREETS AND TO PROMOTE A MULTIMODAL NETWORK CONNECTING GREENSPACES AND PARKS.**

**RECITALS:**

1. Within the MoveSM Letter to Council dated May 19, 2020, the concept of healthy “slow” streets was recommended by over sixty (60) concerned San Marcos Residents.
2. The implementation of Healthy Streets could provide valuable recreational space during the ongoing state of park closures due to the Covid – 19 pandemics; relieve pressure on the parks system generally; and promote active, outdoor, and socially distant recreation and transportation.

**BE IT RESOLVED BY THE PARKS AND RECREATION BOARD OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** It is recommended that the City Council provide direction to the city manager to move forward with the implementation of a Healthy, Slow Street Program on equitably distributed neighborhood streets across the City to achieve the outcomes stated above. Furthermore, it is recommended to initiate said program with a Pilot Program on a willing neighborhood street, such as Alamo Street, where a number of supporting residents currently reside.

**ADOPTED** on August 20, 2020.

Attest:

*Christie Murillo*

Christie Murillo  
Staff Liaison

*Diane Phalen*

Diane Phalen  
Chair

# HEALTHY, SLOW STREETS SAN MARCOS

May 19, 2020

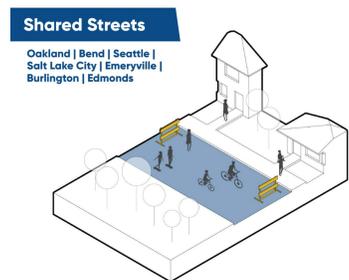
Mayor and Council,

Thank you for your leadership during this challenging time. MoveSM submits this public comment as a moment of reflection on the state of the largest portion of public space in our cities -- our streets -- and the attached [petition](#)<sup>1</sup> as a call to action to create more safe human spaces on them, especially during this time of required physical distancing.

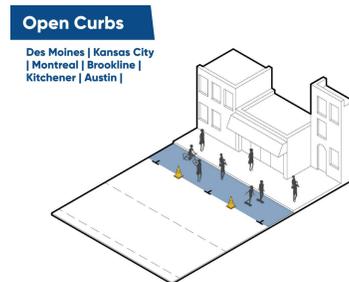
One of the “silver linings” of this awful pandemic is that fewer cars have been on the road. You’ve likely seen the remarkable photos from around the world depicting air quality improvement so dramatic you can actually [see it](#)<sup>2</sup>. Unfortunately, you may have also noticed that motorists are driving faster than ever. While the number of car crashes is plummeting due to lower traffic volumes, the rate of car crashes per mile driven is actually up in many cities as drivers are getting more reckless on [wide open lanes](#)<sup>3</sup>.

During this crisis, more people than ever are turning to active transportation as they seek relief from enclosed spaces; but cyclists and pedestrians have been allowed such a limited allocation of street space, they often struggle to give physical distance. The acres of impervious surfaces given over to cars have been brought into stark relief.

Nationally, [cities small and large](#)<sup>4</sup> are responding by creating “slow streets,” “open streets,” or “healthy streets” programs where humans are getting back some of the space giving over to cars through the closing of just a few streets to thru-traffic and limiting non-resident access to only emergency and delivery vehicles traveling at slow speeds. A movement for this type of program is growing in Central Texas as well and Austin City Council passed a resolution to create their own “healthy streets” program earlier this month. These programs utilize basic signage and a number of guides for [implementation are available](#)<sup>5</sup>, similar to the graphic at right by Street Plans.



Inspired by these national movements and resources, MoveSM worked in collaboration with SimpleCity Design to create the attached document and map which offers some streets distributed across a variety of neighborhoods for your consideration of a Phase 1 roll-out of San Marcos’ own Slow Streets Program.



It is encouraging to see portions of Belvin St have recently been made limited access (image at right), which demonstrates the ease of implementing a slow street. Nearby San Antonio St. is also proposed as a Slow Street in the attached document and the Open Curb style shown above would be an excellent option given the large width of that street that would maintain full vehicle access. Regardless of the streets selected, it’s important that slow streets be equitably provided throughout the community as all residents deserve the opportunity to safely use public space.



Thank you again for your service to the City during this challenging time in our history. And, thank you in advance for creating Slow Streets in San Marcos for the health and safety of your citizens.

Sincerely,

**The Members of MoveSM**

[movesm@googlegroups.com](mailto:movesm@googlegroups.com)

<sup>1</sup><https://actionnetwork.org/petitions/healthy-slow-streets-san-marcos>

<sup>2</sup><https://www.cbsnews.com/news/coronavirus-photos-decline-air-pollution-lockdown/>

<sup>3</sup><https://usa.streetsblog.org/2020/04/09/covid-19-cuts-car-crashes-but-what-about-crash-rates/>

<sup>4</sup>A non-exhaustive list of cities taking action may be found at: <https://docs.google.com/spreadsheets/d/1tjam1v0NLUWkYedla4dVOL49pyWIPIyGwRB0DOnm3Ls/edit#gid=0>

<sup>5</sup><https://smartgrowthamerica.org/webinar-recap-complete-streets-responses-to-covid-19/>

Dear San Marcos Mayor and City Council,

64 people have signed a petition on Action Network asking for the implementation of a Healthy, Slow Streets Program in San Marcos as our community navigates the pandemic.

Below is the petition they signed:

*Mayor Hughson and Council members,*

*During this pandemic, more people than ever are turning to active transportation as they seek relief from enclosed spaces; but cyclists and pedestrians have been allowed such a limited allocation our streets, they often struggle to give physical distance. Parks have been closed, but people want to get outside! The acres and acres of oil-based impervious surfaces given over to single occupant vehicles has been brought into stark relief.*

*Across the County, cities small and large are responding by creating "slow streets," "healthy streets," or "open streets" programs that give back some of the public space given to cars back to people by closing vehicular lanes to thru-traffic and limiting non-resident access to only emergency, service, and delivery vehicles traveling at very slow speeds (e.g. 10mph). San Marcos should join them!*

*We are asking the San Marcos City Council to immediately create a limited number of Slow Streets in neighborhoods across San Marcos through at least August 1, 2020 to allow residents to more safely physically distance.\_*

*Thank you for your service to the City during this challenging time in our history. And, thank you in advance for creating Slow Streets in San Marcos for the health and safety of your citizens.*

You can view each petition signer and the comments they left you below.

Thank you,

MoveSM & the following collective Healthy, Slow Streets petition signees

---

**1. Laura Leigh Wilde** (ZIP code: 78666)  
Great idea!

**2. Adam Zavala** (ZIP code: 78666)

**3. Anahi Villarruel** (ZIP code: 78666)

**4. Annie Simpson** (ZIP code: 78666)

**5. Anthony Cross** (ZIP code: 78666)

**6. L. Tim Bauerkemper** (ZIP code: 78666)

I would propose the middle section of Franklin Dr as well, the part with no sidewalk and far too wide for a residential street. That runs from Girard to Perkins. The sidewalk addition from Bishop up the hill has slowed traffic since the lane is now the size of a freeway lane rather than something you would see on a test track for nascar...

The Girard to Perkins section could be narrowed with cones like this and still have two directions of travel. I worry what will happen now that the Hopkins detour is supposedly Craddock... once people realize cutting up Franklin saves about a mile we will be the unofficial detour.

The stretch from perkins to Old 12 where it gets skinnier but the housing dynamics has street parking that other stretch doesnt, well thats a problem slow streets wont solve. Perhaps if there were some runaway bulldozers get loose but that's not gonna fly. Terrible design....

**7. Kathleen Seal** (ZIP code: 78666)

**8. Raquel Damico** (ZIP code: 77803)

**9. Natalie Bones** (ZIP code: 78666)

**10. Brian Smith** (ZIP code: 78666)

**11. Brenda McGahagin** (ZIP code: 78666)

**12. Carina Boston Pinales** (ZIP code: 78666)

If we were to phase in and integrate these concepts in planning we would be able to adapt what we have and plan for what we want.

**13. Cassandra Garza** (ZIP code: 78640)

**14. Matt Chambers** (ZIP code: 78666)

**15. Christine Terrell** (ZIP code: 78666)

**16. Celeste Monforton** (ZIP code: 78666)

**17. Cory Glisson-Munier** (ZIP code: 78666)

**18. Daniel Currey** (ZIP code: 78666)

**19. Diann McCabe** (ZIP code: 78666)

I ask the San Marcos City Council to immediately create a limited number of Slow Streets in neighborhoods across San Marcos through at least August 1, 2020 to allow residents to more safely physically distance. I live at the corner of Alamo and Holland St. Holland St has heavy and fast traffic. Many many pedestrians including children and pets walk along Alamo St which should be a slow street. Holland St traffic turning on to Alamo is often too fast. A slow street designation would help improve the quality of life for families and individuals who walk there. Thank you

**20. Emily Herring** (ZIP code: 78666)

We are not at all through the woods... We need to keep up with as many precautions as possible here in San Marcos.

**21. Elizabeth Mjos** (ZIP code: 78666)**22. Emily McCuistion** (ZIP code: 78666)

I support the idea of slow streets in San Marcos, for the short term. I live on one of the streets proposed as a slow street and think it would benefit from the reduced speed limit, given the high pedestrian traffic. However, I do not think San Antonio Street should be designated as a slow street, especially since it is the main alternative to Hopkins during construction. I also think there should be exceptions to the 10mph rule for cyclists on these streets.

**23. Eric Shaw** (ZIP code: 78666)

Love this initiative; precisely what's needed in San Marcos right now!

**24. Erin Leavitt** (ZIP code: 78666)

Thanks for helping us stay healthy and safe.

**25. Gabrielle Moore** (ZIP code: 78666)

I love this plan and believe most San Marcos residents will adapt to it readily. Please make it happen!

**26. Gloria Salazar** (ZIP code: 78666)**27. Heather Demere** (ZIP code: 78666)**28. Isabelle Ganz** (ZIP code: 77030)**29. Kathlene Ingham** (ZIP code: 78666)**30. Ivan Friedman** (ZIP code: 78666)**31. Antonio Castillo** (ZIP code: 78666)

**32. Jennifer Katz** (ZIP code: 78666)

**33. Amy Kirwin** (ZIP code: 78666)

**34. Juan Arredondo** (ZIP code: 78666)

**35. John David Carson** (ZIP code: 78666)

**36. Jordan Feldman** (ZIP code: 78666)

**37. James Steenhagen** (ZIP code: 78666)

Great idea!

**38. July Moreno** (ZIP code: 78666)

I appreciate this proposal.

**39. Karla Lewis** (ZIP code: 77087)

I am retiring to my property in Country Estates, but at this time live in Houston

**40. Kate Shaw** (ZIP code: 78666)

I can see just how important it is for children and adults to be outside for exercise and recreation to support physical health, emotional wellness and foster strong community. Slow streets would allow for healthy social distancing and improve quality of life for local residents.

**41. Kim Clogston** (ZIP code: 78667)

**42. Lauren Holloway** (ZIP code: 77904)

**43. Lene Richards** (ZIP code: 78666)

**44. Logan Maxwell** (ZIP code: 78666)

**45. Lauren Patterson** (ZIP code: 78666)

**46. Lynny Davis Moore** (ZIP code: 78666)

Allow bikes everywhere

**47. Matt Lewis** (ZIP code: 78666)

City Council,

Your leadership is needed now more than ever to demonstrate to the community a healthy, safe city is priority. Cars have dominated the landscape for far too long. Please support the movement of people through active transportation and provide them the ability to use the public realm confidently as they adapt.

**48. Melissa Nicewarner Daly** (ZIP code: 78666)

**49. Morgan Passino** (ZIP code: 78666)

**50. Patricia Simpson** (ZIP code: 78666)

Thank you! So enlightening and informative.

Hopefully, with your hard work and our responses, we can get this started and implemented in San Marcos!!

**51. Alex Vogt** (ZIP code: 78666)

Slow streets for the win!

**52. Peter Tschirhart** (ZIP code: 78666)

Healthy environments and active living have never been more important. Please make it EASY for people to choose wellness. Open our streets to people!

**53. Thomas Simpson** (ZIP code: 78666)

**54. Brenda Mcgahagin** (ZIP code: 78666)

10 MPH should not apply to bicycles. The street parallel to Hopkins is only thru street alternative to Hopkins (now under construction)

**55. Stephen Hurdle** (ZIP code: 78666)

Please keep our city small and safe!

**56. Eli Zabloksy** (ZIP code: 78666)

**57. Betsy Robertson** (ZIP code: 78666)

As a long time bicycle rider I support this initiative. I think it will increase the health and cohesiveness of our community.

**58. Sherwood Bishop** (ZIP code: 78666)

This looks like a good idea!

**59. Stephanie Symmes** (ZIP code: 78666)

We need streets that are convenient and safe for all users! Please support sustainable transportation options for the City of San Marcos.

**60. Sarah Simpson** (ZIP code: 78666)

One per neighborhood, please!

**61. Stevie Vitola** (ZIP code: 78201)

**62. Sydney Huddleston** (ZIP code: 78666)

**63. Jamey Strauss** (ZIP code: 78620)

**64. Zachary Crissman** (ZIP code: 78666)



"Eyes on the Street: A Quick Look at Oakland's 'Slow Streets.'" News Break. Oakland, CA. April 15, 2020.

# SLOW STREETS **SAN MARCOS**

MOVE»SM  
simplecitydesign

May 1, 2020

## ABOUT "SLOW STREETS" SAN MARCOS

The "Slow Streets San Marcos" Program is proposed for immediate implementation under the Covid-19 Disaster Declaration. The program supports safe physical activity by creating more space for physical distancing for all San Martians on streets shown in [Phase One: Limited-Access Streets Map](#) (see page 3). Temporary residential street closures to through traffic enable people to more comfortably use these low-traffic streets for physically distant walking, wheelchair rolling, jogging, and biking all across the City.

Slow Streets receive "soft closures" with traffic cones, barricades and signage. Additional signage for residents to place in their yard can be made available through the City website to be printed and displayed as additional safety measures, and to promote community inclusion.

The City should determine a managing department. Consider recommending the Planning Department be empowered to manage the program with the support of the Engineering and Public Works Department.



## WHO HAS IMPLEMENTED SLOW STREETS?

Cities across the country are using local Covid-19 Disaster Declarations to temporarily close streets to allow for people to walk, bike, play, and exercise outside safely. Cities with Slow Streets:

- Bend, OR
- Brookline, MA
- Boston, MA
- Burlington, VT
- Denver, CO
- Des Moines, IA
- Duluth, MN
- Madison, WI
- Minneapolis, MN
- New York City, NY
- Oakland, CA
- Palo Alto, CA
- Portland, OR
- Seattle, WA
- Vancouver, Canada

Barricade blocking closed roads in Swope and Blue Valley parks. Kansas City, MO. KSHB. 2020

## WHY?

- **COVID-19 Has Us Locked In.** The Coronavirus pandemic (COVID-19) is changing lifestyles around the globe. As Hays County Shelter-in-Place orders extend, the City of San Marcos can consider ways to increase San Martians access to open space and provide increased social distancing. Streets and sidewalks can be a resource to make sure we stay healthy during this prolonged period of sheltering in place.
- **People are Using Streets as Shared Public Spaces.** With COVID-19, people are taking to the streets more than ever. In order to maintain at least 6 feet of space from a neighbor, people are walking from the sidewalk into the street or crossing to the other side, or putting their families on bikes and strolling around the neighborhood to get exercise when vehicle traffic is low.
- **Physical Activity Needs to Occur in Your Neighborhood on Our Streets.** Acknowledging that all San Martians have access to public streets, and that our streets and sidewalks have become places where people get their daily activity is proposing to encourage community members to use readily available materials to keep their physical activity local.



"Cities Close Streets to Cars, Opening Space for Social Distancing." The New York Times. Oakland, CA. April 11, 2020.

## WHERE IN SAN MARCOS?

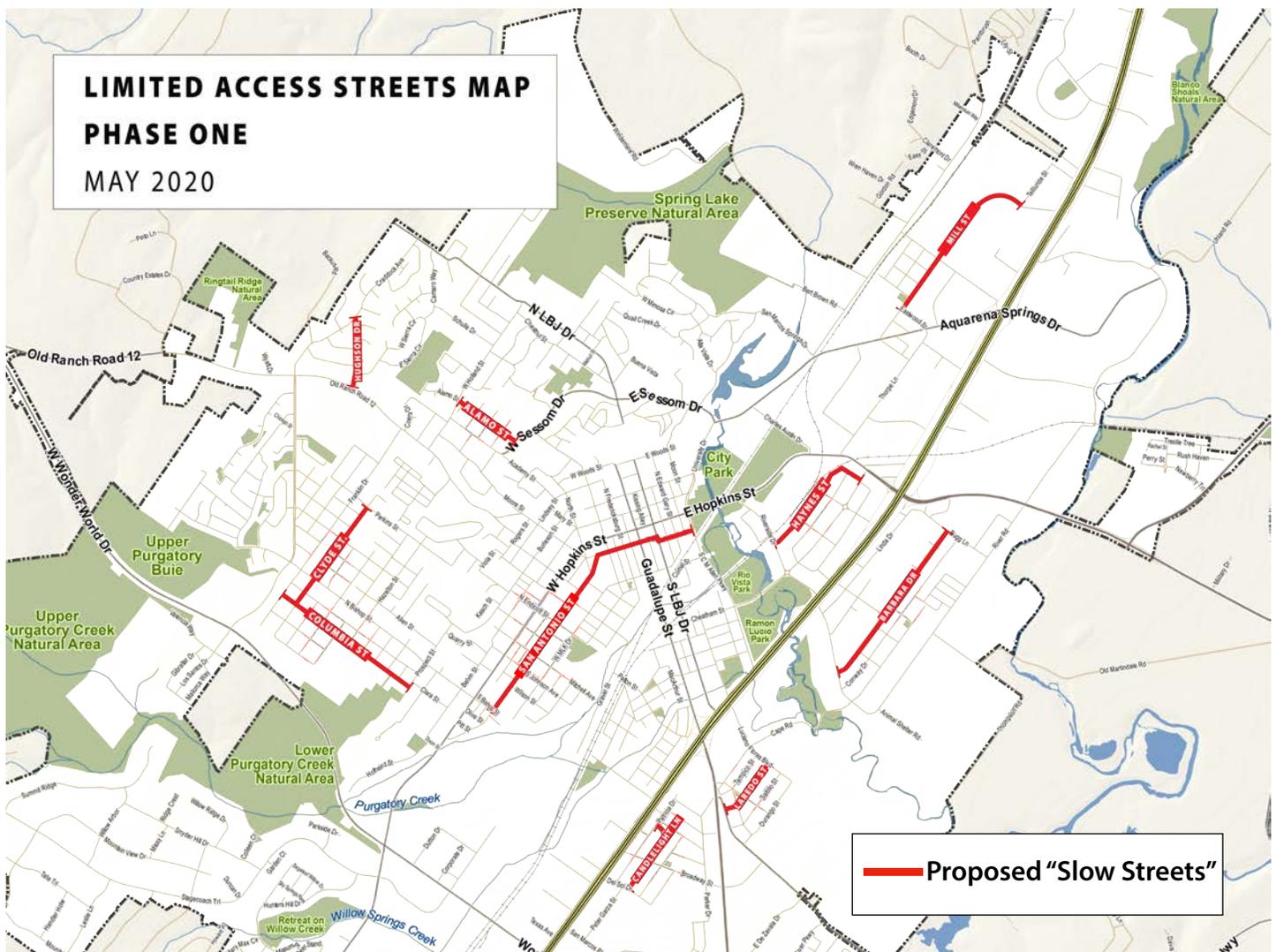
The City should use the [Phase One: Limited-Access Streets Map](#) proposed the following “Slow Streets”.

See the map for graphic representation of street segments proposed for closure.

- ▶ Laredo St.
- ▶ Mill St.
- ▶ Clyde St.
- ▶ Columbia St.

- ▶ Barbara St.
- ▶ Candlelight Ln.
- ▶ San Antonio St.
- ▶ Haynes St.
- ▶ Hughson Dr.
- ▶ Alamo St.

Community feedback should be collected to evaluate phase two of closures. Feedback should be collected through online facilitation.



## WHAT?

"San Marcos Slow Streets" **DOES** the following:

- ✓ **Declare "Road Closed to Through Traffic"** on all "Slow Streets" for the Duration of the Emergency or until otherwise indicated by the City of San Marcos.
- ✓ **Provide Signage/Barricades at Key Locations**, at selected locations, such as intersections with arterial streets, post closure signage.
- ✓ **Promote Physically Distant Physical Activity** with City streets identified as closed to through traffic, residents can safely distance themselves from neighbors when walking, jogging, and biking along these streets. Always maintain at least 6 feet of space from others.
- ✓ **Build City Partnerships** by working with community organizations and civic leaders to complement City-led interventions – communications and outreach, additional signage, evaluation, and potential community-designed traffic calming ("tactical urbanism").
- ✓ **Measure Impact and Modify Overtime.** Our cities are adapting faster than ever before due to COVID-19. The program plans to evaluate the efficacy of our efforts overtime and make any relevant adjustments, perhaps making some changes permanent with installation of traffic calming infrastructure.

"Slow Streets San Marcos" **DOESN'T** do the following:

- ✗ Limit access for emergency vehicles or close streets to people that must use them to access a final destination.
- ✗ Encourage social gathering or events on any of these streets. Always maintain at least 6 feet of physical space from others.
- ✗ Seek to ticket or financially penalize those who use the corridors as through streets.
- ✗ Affect CARTS bus routes or service, trash/recycling collection, or deliveries.

## HOW?

- **City of San Marcos** declares emergency Road Closed to through traffic and install signs/ barricades at key intersections. These "soft closures" should start with the following streets:
  - ▶ Laredo St.
  - ▶ Mill St.
  - ▶ Clyde St.
  - ▶ Columbia St.
  - ▶ Barbara St.
  - ▶ Candlelight Ln.
  - ▶ San Antonio St.
  - ▶ Haynes St.
  - ▶ Hughson Dr.
  - ▶ Alamo St

The City then seeks input on additional streets for safe streets closures.

- **Drivers should avoid these streets** unless it's necessary to access their home, or in emergency situations.
- **Drivers should drive slowly on ALL streets and expect to encounter people walking and biking.** Although there are fewer other cars on the road, there are more people getting fresh air and physical activity on our streets all across the City than ever before. **Hospitals don't need additional patients!**
- **San Martians must obey physical distancing at ALL times.** Reminder: these streets are for jogging, walking, family and individual biking, not for playing outside of individual households. Maintain at least 6' distance from others outside your immediate household.

| Title  | Link  | Description  | Author  |
|--|---|--|---|
| Streets for Pandemic Response & Recovery                                       | <a href="https://nacto.org/wp-content/uploads/2020/07/200625_FrontMatter.pdf">https://nacto.org/wp-content/uploads/2020/07/200625_FrontMatter.pdf</a>   | Design guidance for different types of street layouts as a response to COVID-19. | National Association of City Transportation Officials |
| Slow, Shared, and Safe: Closing Streets to Thru-Traffic During the Coronavirus | <a href="https://nacto.org/event/slow-shared-safe-open-streets-coronavirus/">https://nacto.org/event/slow-shared-safe-open-streets-coronavirus/</a>   | Webinar about Shared Streets.  | National Association of City Transportation Officials |
| Healthy Streets  | <a href="http://www.austintexas.gov/HealthyStreets">http://www.austintexas.gov/HealthyStreets</a>   | City of Austin Website about their Slow Streets Program.                         | City of Austin  |
| No Cars Go: City to Test Bicycle, Pedestrian-Focused Streets in West SA        | <a href="https://therivardreport.com/city-of-san-antonio-to-close-stretches-of-2-residential-streets-to-most-traffic/">https://therivardreport.com/city-of-san-antonio-to-close-stretches-of-2-residential-streets-to-most-traffic/</a> | Article about City of San Antonio Slow Streets Program.                          | Rivard Report   |



## Legislation Text

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**File #:** ID#20-737, **Version:** 1

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**AGENDA CAPTION:**

Hold discussion on Historic Preservation Commission Recommendation Resolution 2020-02RR, proposing City Council support for the repatriation efforts of the Miakan-Garza Band of the Coahuiltecan people, and provide direction to staff.

**Meeting date:** October 20, 2020

**Department:** Planning and Development Services - Alison Brake, Per request by Council Members Marquez, Baker, Derrick and Rockeymoore

**Amount & Source of Funding**

**Funds Required:** N/A

**Account Number:** N/A

**Funds Available:** N/A

**Account Name:** N/A

**Fiscal Note:**

**Prior Council Action:** N/A

**City Council Strategic Initiative:**

N/A

**Comprehensive Plan Element (s):**

- Economic Development
- Environment & Resource Protection
- Land Use
- Neighborhoods & Housing
- Parks, Public Spaces & Facilities
- Transportation
- Core Services
- Not Applicable

**Master Plan:** N/A

**Background Information:**

On August 20, 2020, Commissioner Perkins requested that this item be placed on the September agenda of the Historic Preservation Commission. At the September 3, 2020 regular meeting of the Historic Preservation Commission, Dr. Mario Garza, Elder Chair of The Indigenous Cultures Institute, spoke to the Commission regarding the Miakan-Garza tribe's repatriation efforts. At this meeting, the Commission directed staff to bring a Recommendation Resolution, as outlined by their bylaws, for consideration at the October meeting regarding supporting Dr. Garza and the Miakan-Garza tribe in their efforts for the reburial of the Coahuiltecan people in Hays County.

**Council Committee, Board/Commission Action:**

On October 1, 2020 the Historic Preservation Commission unanimously approved the attached Recommendation Resolution following discussion at their September meeting.

**Alternatives:**

**Recommendation:**



## RECOMMENDATION RESOLUTION

### Historic Preservation Commission

**Recommendation Number: (2020-02RR):** Recommending the San Marcos City Council support the repatriation efforts of the Miakan-Garza Band of the Coahuiltecan people.

WHEREAS, the City's Comprehensive Plan, "Vision San Marcos: A River Runs Through Us," recognizes that the citizens of San Marcos "are conscious of preserving our rich historical past and will pursue future cultural enrichment"; and

WHEREAS, the Historic Preservation Commission is charged with advising the City Council on matters that promote historic preservation and conservation throughout the city of San Marcos; and

WHEREAS, Dr. Mario Garza, Elder Chair of the Indigenous Cultures Institute, spoke to the Historic Preservation Commission at their September 3, 2020 regular meeting regarding the efforts of the Miakan-Garza Band of Coahuiltecan people to repatriate and rebury a set of remains currently held by the University of Texas; and

WHEREAS, the Historic Preservation Commission finds that such repatriation efforts are consistent with preserving the City's rich history and cultural past.

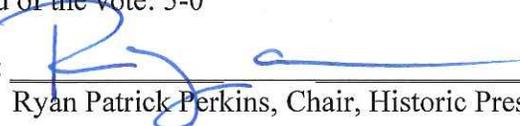
NOW, THEREFORE, BE IT RESOLVED by the Historic Preservation Commission, as follows:

1. The Historic Preservation commission respectfully recommends that the San Marcos City Council consider supporting the repatriation efforts of the Miakan-Garza Band by submitting a letter of such support to Dr. Garza.

Date of Approval: October 1, 2020

Record of the vote: 5-0

Attest:

  
\_\_\_\_\_  
Ryan Patrick Perkins, Chair, Historic Preservation Commission



**PLANNING AND DEVELOPMENT SERVICES**

**TO:** Historic Preservation Commission  
**FROM:** Alison Brake, CNU-A, Historic Preservation Officer and Planner  
**DATE:** September 15, 2020  
**RE:** **AGENDA ITEM 2: REPATRIATION EFFORT OF THE MIAKAN-GARZA BAND OF COAHUILTECAN PEOPLE**

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At the September 3<sup>rd</sup> regular meeting, the Commission discussed the repatriation efforts being undertaken by the Miakan-Garza Band of the Coahuiltecan People and directed staff to bring forward a recommendation resolution to the following meeting. It is attached for discussion and action. The information received from Chair Perkins on this matter is attached.

As a reminder, per the bylaws, following approval of the recommendation resolution by a majority of the membership the Commission, staff will forward it to the City Clerk and City Manager for distribution of the City Council.

## HELP US REBURY OUR ANCESTORS

The University of Texas at Austin refuses to convey the remains of three Native American ancestors claimed for reburial by the Miakan-Garza Band of the Coahuiltecan people, a state-legislature-recognized tribe of Texas. The three ancestors, unearthed in Hays County over sixty years ago, are part of the University's "collection" of more than 2,400 Native remains kept in cardboard boxes housed in a warehouse in North Austin. Now the tribe is asking Texans to help them secure these remains for reburial.

"We asked for our ancestors more than four years ago," says Dr. Mario Garza, cultural preservation officer for the Miakan-Garza Band. "After years of letters, emails, and meetings, we finally got a letter of denial on July 7th of this year."

According to the letter signed by Brian Roberts, director of the Texas Archeological Research Laboratory, the Miakan-Garza's request was denied because the University was unable to identify a shared group identity between the remains and any group, including the Miakan-Garza Band. Documentation of shared group identity is considered during the federal Native American Graves Protection and Repatriation Act (NAGPRA) process, which requires institutions to convey remains back to tribes for reburial.

"These remains are classified as 'culturally unidentifiable' which means that they are too old to associate with any known, federally recognized tribes in existence today," says Dr. Garza. "We submitted documentation that our Coahuiltecan people are original Texas Natives who have lived here continuously for the past 14,000 years – these ancient remains belong to us."

In 2014 the Miakan-Garza Band submitted a similar request to Texas State University for one set of remains unearthed in San Marcos, providing documentation of shared group identity with the "culturally unidentifiable" remains. The documentation was accepted, and the tribe was given possession of their ancestor after proceeding through the NAGPRA process.

"We gave U.T. the same documentation that was accepted by Texas State University, the NAGPRA Review Committee, and the Secretary of the Interior, when those entities gave us one of our 'culturally unidentifiable' ancestors to rebury," says Dr. Garza. "Why won't U.T. accept the same documentation and let us rebury our relations?"

The tribal elders believe that the University wants to maintain the status of holding one of the largest archeological collections of Native American remains. According to the NAGPRA database, approximately 3,500 culturally unidentifiable Native American remains have been removed from Texas and are held in institutions and museums throughout the country. Of those 3,500 remains, over 2,400 are held by the University of Texas.

“We believe that when a person is buried, they depart on their spiritual journey. When they are unearthed, their spiritual journey is interrupted and they are suspended in agony,” says Dr. Garza. “It is our obligation as indigenous people to return our ancestors to Mother Earth so they can proceed to the Great Mystery of the Cosmos.”

Members of the Miakan-Garza Band have been involved in repatriation for over thirty years. They participated in establishing the Comanche Cemetery repatriation burial grounds at Fort Hood in 1998, and in one of the largest repatriations of almost 200 remains at Mission San Juan in San Antonio in 1999. The tribe collaborated with the City of San Marcos to establish the first city repatriation site in Texas in 2016 and has reinterred seven remains there during the past three years.

“It is extreme arrogance for an institution to own the remains of a people and deny their descendants’ religious right to bury their dead,” says Dr. Garza. “We are now sending a plea to all people of good conscience: Help us to rebury our ancestors.”

The tribe is asking for letters to be sent to the president of U.T. Austin, Jay Hartzell at 110 Inner Campus Drive, Stop G3400, Austin, TX 78712-3400 or [president@utexas.edu](mailto:president@utexas.edu).

For more information, contact the Miakan-Garza tribe through their nonprofit, Indigenous Cultures Institute at <https://IndigenousCultures.org> or at [ICInfo@IndigenousCultures.org](mailto:ICInfo@IndigenousCultures.org), call Dr. Garza at 512-393-3310



September 25, 2020

Dr. Mario Garza  
Indigenous Cultures Institute  
P.O. Box 1414  
San Marcos, Texas 78667

Dear Dr. Garza,

Thank you for your July 13, 2020 and September 21, 2020 letters.

The University of Texas at Austin respects the indigenous people who live and have lived in Texas and recognizes the spiritual and cultural significance of interment of their ancestors. I also acknowledge the particular significance of this issue to you and the Miakan-Garza Band.

We are committed to honoring your cultural and religious perspectives, while continuing to follow the established legal procedures outlined in federal law. To accomplish that, the university will promptly seek authority from the National Park Service to allow the remains identified in your letter to be reinterred. We plan to do so by requesting a recommendation from its Native American Graves Protection and Repatriation Act Review Committee that would enable us to offer the remains promptly for reburial. We look forward to a positive resolution to this important issue.

Sincerely,



Jay Hartzell

cc: Ann Stevens, Dean, College of Liberal Arts  
Brian Roberts, Director, Texas Archeological Research Laboratory

**JAY HARTZELL, President**



# City of San Marcos

## City Council Regular Meeting

October 20, 2020



# Presentation

## Item 26

Hold discussion on Historic Preservation Recommendation Resolution 2020-02RR, proposing City Council support for the repatriation efforts of the Miakan-Garza Band of the Coahuiltecan people, and provide direction to staff.



# Progress to date

- **August 20, 2020** – Historic Preservation Commission (HPC) Chair, Commissioner Perkins, requested item be placed on HPC’s September agenda for discussion.
- **September 3, 2020** – Discussion held by HPC with Dr. Mario Garza, Elder Chair of The Indigenous Cultures Institute, present.
- **October 1, 2020** – HPC formally adopted Recommendation Resolution 2020-02RR, proposing City Council support for the repatriation efforts of the Miakan-Garza Band of the Coahuiltecan people



# City of San Marcos

630 East Hopkins  
San Marcos, TX 78666

## Legislation Text

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**File #:** ID#20-699, **Version:** 1

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**AGENDA CAPTION:**

**Executive Session** in accordance with:

- A. Section §551.074 of the Texas Government Code: Personnel Matters - to discuss the duties and responsibilities of the City Manager, pertaining to the Police Chief Selection Process
- B. Section §551.071 of the Texas Government Code: Consultation with Attorney - to receive advice of legal counsel regarding acquisition of wastewater easement for proposed development in the Southeast area of the Extraterritorial Jurisdiction
- C. Section §551.072 of the Texas Government Code: Real Property - to receive a staff briefing and deliberations regarding the acquisition of wastewater easement for proposed development in the Southeast area of the Extraterritorial Jurisdiction
- D. Section §551.072 of the Texas Government Code: Real Property - to receive a staff briefing and deliberations regarding acquisition of property in Downtown San Marcos for public use.



## Legislation Text

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**File #: ID#20-701, Version: 1**

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**AGENDA CAPTION:**

Consider action, by motion, or provide direction to Staff regarding the following Executive Session items held during the Work Session and/or Regular Meeting:

- A. Section §551.074 of the Texas Government Code: Personnel Matters - to discuss the duties and responsibilities of the City Manager, pertaining to the Police Chief Selection Process
- B. Section §551.071 of the Texas Government Code: Consultation with Attorney - to receive advice of legal counsel regarding acquisition of wastewater easement for proposed development in the Southeast area of the Extraterritorial Jurisdiction
- C. Section §551.072 of the Texas Government Code: Real Property - to receive a staff briefing and deliberations regarding the acquisition of wastewater easement for proposed development in the Southeast area of the Extraterritorial Jurisdiction
- D. Section §551.072 of the Texas Government Code: Real Property - to receive a staff briefing and deliberations regarding acquisition of property in Downtown San Marcos for public use.